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**Corrected Amendment**  
**for a**  
**Charter Vessel/Headboat Permit Moratorium**  
**Amending the FMPs for:**  
**Reef Fish (Amendment 20)**  
**and**  
**Coastal Migratory Pelagics (Amendment 14)**  
**(Including EA/RIR/IRFA)**



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## ACRONYMS/ABBREVIATIONS USED IN THIS DOCUMENT

ABC	acceptable biological catch
AP	advisory panel
ComFIN	Commercial Fisheries Information Network
Council	Gulf of Mexico Fishery Management Council
CPUE	catch per unit effort
DEIS	draft environmental impact statement
EA	environmental assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
E.O.	Executive Order
ESA	Endangered Species Act
F	instantaneous fishing mortality rate
FL	fork length
FMP	fishery management plan
GMFMC	Gulf of Mexico Fishery Management Council
GSMFC	Gulf States Marine Fisheries Commission
HMS	Highly Migratory Species
IRFA	initial regulatory flexibility analysis
ITQ	individual transferable quota
M	instantaneous natural mortality rate
MRFSS	Marine Recreational Fishery Statistics Survey
MSY	maximum sustainable yield
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OY	optimum yield
RA	Regional Administrator of NMFS
RecFIN	Recreational Fisheries Information Network
RFA	Regulatory Flexibility Act
RIR	regulatory impact review
SAFMC	South Atlantic Fishery Management Council
SAP	stock assessment panel
SBA	Small Business Administration
SEIS	supplemental environmental impact statement
SEP	Socioeconomic Panel
SPR	spawning potential ratio
SSB/R	spawning stock biomass per recruit
SSC	Scientific and Statistical Committee
TAC	total allowable catch
TL	total length
TPWD	Texas Parks and Wildlife Division
VPA	virtual population analysis
YPR	yield per recruit

## TABLE OF CONTENTS

1.0	<u>INTRODUCTION</u> .....	1
2.0	<u>HISTORY OF MANAGEMENT</u> .....	3
2.1	Reef Fish Fishery .....	3
2.1.1	FMP Amendments .....	4
2.1.2	Regulatory Amendments .....	12
2.2	Coastal Migratory Pelagics Fishery .....	15
2.2.1	FMP Amendments .....	15
2.2.2	Regulatory Amendments .....	21
3.0	<u>PURPOSE AND NEED FOR ACTION</u> .....	26
4.0	<u>PROBLEMS REQUIRING A PLAN AMENDMENT</u> .....	28
5.0	<u>PROPOSED ACTIONS</u> .....	28
	A. Duration of the Moratorium .....	28
	B. Gulf Permits and Endorsements .....	29
	C. Initial Eligibility Requirements for Permits and/or Endorsements .....	29
	D. Permit and Endorsement Transfers During the Moratorium .....	29
	E. Vessel Passenger Restriction on Permit Transfers .....	29
	F. Annual Re-issuance of Permits Not Renewed (or Permanently Revoked) .....	29
	G. Appeals Process Under Moratorium .....	30
6.0	<u>MORATORIUM ON CHARTER VESSEL/HEADBOAT PERMITS</u> .....	30
6.1	Comparison of Programs to the Magnuson-Stevens Act Provisions for Limited Access .....	32
	A. Duration of the Moratorium .....	33
	B. Gulf Charter Vessel/headboat Permits and Endorsements .....	50
	C. Initial Eligibility Requirements for Permits and/or Endorsements .....	57
	D. Permit and/or Endorsement Transfers During the Moratorium .....	71
	E. Vessel Passenger Restrictions on Permit Transfers .....	76
	F. Annual Re-issuance of Permits Not Renewed (Or Permanently Revoked) .....	84
	G. Appeals Process under the Moratorium .....	87
7.0	<u>CHARTER VESSEL REPORTING AND PERMIT RENEWAL CONDITIONS</u> .....	92
7.1	Reporting .....	92
8.0	<u>REGULATORY IMPACT REVIEW</u> .....	95
8.1	Introduction .....	96
8.2	Problems and Objectives .....	96
8.3	Methodology and Framework for Analysis .....	96
8.4	Impacts of Management Measures .....	97
8.5	Public and Private Costs of Regulations .....	97
8.6	Summary of Economic Impacts .....	97
8.7	Determination of Significant Regulatory Action .....	99

8.8	Determination of the Need for an Initial Regulatory Flexibility Analysis . . . . .	99
9.0	<u>ENVIRONMENTAL ASSESSMENT</u> . . . . .	105
9.1	Affected Environment and Consequences . . . . .	105
9.1.1	Essential Fish Habitat . . . . .	105
9.1.2	Fishery Resources . . . . .	106
9.1.3	Human Environment . . . . .	107
9.1.4	Effects on Endangered and Threatened Species . . . . .	108
9.1.5	Effects on Wetlands . . . . .	108
9.1.6	Unavoidable Adverse Impacts . . . . .	108
9.1.7	Relationship Between Short Term and Long Term Productivity . . . . .	109
9.1.8	Irreversible and Irretrievable Commitment of Resources . . . . .	109
9.1.9	Cumulative Effects . . . . .	109
10.0	<u>ASSESSMENT OF SIGNIFICANT FACTORS</u> . . . . .	110
10.1	Finding of No Significant Environmental Impact (FONSI) . . . . .	110
10.1.1	Beneficial and Adverse Impacts . . . . .	110
10.1.2	Public Health or Safety . . . . .	110
10.1.3	Unique Characteristics . . . . .	110
10.1.4	Controversial Effects . . . . .	110
10.1.5	Uncertainty or Unique/Unknown Risks . . . . .	111
10.1.6	Precedent/Principle Setting . . . . .	111
10.1.7	Relationships/Cumulative Impacts . . . . .	111
10.1.8	Historical/Cultural Impacts . . . . .	111
10.1.9	Endangered/Threatened Species Impacts . . . . .	112
10.1.10	Interactions with Existing Laws for Habitat Protection . . . . .	112
	Conclusion . . . . .	112
11.0	<u>OTHER APPLICABLE LAWS</u> . . . . .	113
11.1	Vessel Safety Considerations . . . . .	113
11.2	Coastal Zone Consistency . . . . .	113
11.3	Endangered Species Act . . . . .	114
11.3.1	ESA Consultation History . . . . .	114
11.3.2	Effects on Endangered and Threatened Sea Turtles . . . . .	114
11.3.3	Effects of Other Hook and Line Fishery Activities . . . . .	115
11.4	Marine Mammals Protection Act . . . . .	115
11.5	Paperwork Reduction Act . . . . .	116
11.6	Federalism . . . . .	116
12.0	<u>LIST OF AGENCIES AND PERSONS CONSULTED</u> . . . . .	116
13.0	<u>PUBLIC HEARING LOCATIONS AND DATES</u> . . . . .	117
14.0	<u>LIST OF PREPARERS</u> . . . . .	118
15.0	<u>REFERENCES</u> . . . . .	119

16.0	<u>TABLES</u>	122
	Table 1. Change in the Number and Percent of Charter Vessels and Headboats in the Gulf Region by States for the Period 1981-1998	122
	Table 2. Number of Recreational For-Hire Vessels Licensed by the Gulf States.	123
	Table 3. Coastal Migratory Pelagics Charter Vessel/Headboat Permits by Gulf Port - January 2000	124
	Table 3a. Charter Vessels with Only the Coastal Migratory Pelagics Permit by Gulf States Port, January 2000	126
	Table 4. Reef Fish Charter Vessel/Headboat Permits by Gulf States Port January 2000	127
	Table 4a. Charter Vessels with Only the Reef Fish Permits by Gulf States Port January 2000	129
	Table 5. Gulf of Mexico Landings of Red Snapper (1,000's of Fish) by Charter Vessel/Headboat Sectors and Percentage of Total Recreational Landing for 3 periods between 1981-1997.	130
	Table 6. Gulf of Mexico Recreational Landings of King Mackerel (1,000's of fish) by Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 1983, 1988, and 1997.	130
	Table 7. Gulf of Mexico Recreational Landings of Gag Grouper (1,000's of fish) by Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 3 Periods Between 1981 and 1996.	131
	Table 8. Gulf of Mexico Landings of Vermilion Snapper (1,000's of fish) by Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 3 Periods Between 1981 and 1996.	131
	Table 9. Gulf of Mexico Recreational Landings of Greater Amberjack (1,000's of Fish) by Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 3 Periods Between 1982-1996	132
	Table 10. Gulf of Mexico Recreational Landings of Red Grouper (1,000's of Fish) by Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 3 Periods Between 1981-1997	132
	Table 11. Vessels holding both Reef Fish and Coastal Migratory Pelagic Charter Vessel Permits by Gulf States Port August 2000.	133
	Table 11a. Charter Vessels with Only the Reef Fish Permits by Gulf States Port August 2000.	136
	Table 11b. Charter Vessels with Only the Coastal Migratory Pelagics Permit by Gulf States Port, August 2000.	137
	Table 12. Red Snapper Recreational Landings (thousands of pounds)	138
16.0	<u>FIGURES</u>	139
	APPENDIX A	140
	Alternatives Proposed by Mr. Fensom for a Permit Moratorium Program	140
	APPENDIX B	142
	Alternatives Proposed by Ms. Walker for a Permit Moratorium Program	142
	APPENDIX C	143
	Supplemental Regulatory Impact Review and Regulatory Flexibility Act Analysis	143

## **1.0 INTRODUCTION**

The National Marine Fisheries Service (NMFS) promulgated the charter moratorium regulations (67 FR 43558, June 28, 2002) to implement Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Gulf of Mexico Fishery Management Council (Council). Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations. In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendments, and to fully comply with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, NMFS prepared this corrected amendment to address this error and, as such, to reflect the actions approved by the Council. Specifically, this corrected amendment will eliminate one eligibility criteria in the final rule which states that the charter vessel headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: (1) An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). This corrected amendment would also reopen the application process for obtaining Gulf charter vessel/headboat moratorium permits and extend the applicable deadlines; extend the expiration dates of valid or renewable open access permits for these fisheries; and extend the expiration date of the moratorium to account for the delay in implementation.

In order to comply with the procedural requirements of the Magnuson-Stevens Act as stated above, the entire amendment will be submitted for Secretarial review, even though only one specific section of the document will be substantively altered, and if approved, new regulations will be promulgated accordingly from the properly processed amendment. Portions of the document, specifically the environmental and economic analyses required pursuant to other laws, remain in the document to provide clarity for reviewers and facilitate meaningful public comment. These analyses were previously disseminated and subject to public comment in the original amendment package. The majority of the analyses remain valid and unaffected, given that most of the regulatory measures analyzed will be unaltered by the new amendment. As stated above, the changes to the original moratorium relate to a single eligibility criterion and necessarily the timing of implementation. Where substantive changes were made to the amendment, new analyses describing these effects were conducted for the Regulatory Impact Review (RIR) and Regulatory Flexibility Act Analysis (RFAA). This information is provided in a Supplemental RIR and RFAA that is included as an attachment to the amendment.

Appendix A, at the end of this document, includes alternatives for public comment proposed by Mr. Fensom for a simpler permit moratorium program. Appendix B, at the end of this document, includes alternatives for public comment proposed by Ms. Walker for a simpler permit moratorium program.

The recreational fisheries in the Gulf region are larger than other east coast regions in terms of landings and participants. During 1995 and 1996, an average of about 4.0 million persons participated in marine recreational fishing in the Gulf states (NMFS 1997) (Page Campbell, Texas Parks and Wildlife Department [TPWD], personal comm). They made approximately 26.7 million trips annually and landed approximately 205 million pounds of fish. Marine recreational fishermen in the Gulf states spent \$3.5 billion and created an overall economic impact of \$7.0 billion (ASFA 1997).

In the Gulf region there are currently about 3,220 recreational for-hire vessels licensed by the states (Gulf States Marine Fisheries Commission [GSMFC] 1999 data; TPWD 1999 data). This includes headboats, charter vessels, and smaller guide boats. The headboats and most of the charter vessels typically fish offshore. Many of the guide boats fish the estuaries and tidal coastal flats. Dive boats, whose clientele harvest fish, are included in these licensed boats while dive boats that never harvest fish are not. The recreational for-hire boats contribute significantly to the economies of many fishing communities.

These 3,220 state licensed recreational for-hire vessels were distributed as follows: Florida (64.2 percent), Texas (18.0 percent), Louisiana (11.7 percent), Alabama (4.6 percent), and Mississippi (1.5 percent). The most recent surveys of charter vessels and headboats in 1998 for the Gulf region estimated that there were 1,275 charter vessels and 92 headboats (Holland 1998). These survey data (Table 1), as contrasted with data for 1999 from GSMFC and TPWD, indicate that for Florida, Texas, and Louisiana, a significant portion of the recreational for-hire vessels were likely guide boats. Data in Table 1 indicate the number of charter vessels estimated by the surveys increased by 31 percent between 1988 and 1998, and by 147 percent between 1981 and 1998, whereas the number of headboats declined by 5 and 2 percent, respectively, for the same periods. Browder et al. (1978) documented a decline in headboats in Florida by 20 percent between early 1960's and 1977.

The number of individual angler charter vessel trips in the Gulf increased by about 51 percent between the periods 1982 - 1992 and 1993 - 1998 (Figure 1 from Socioeconomic Panel [SEP] Report 1999).

Amendment 2 to the Coastal Migratory Pelagic Fishery Management Plan (FMP) (implemented in 1987) required that charter vessels and headboats fishing in the exclusive economic zone (EEZ) of the Gulf or Atlantic for coastal migratory pelagic species have permits. Amendment 11 to the Reef Fish FMP (implemented in 1996) required that charter vessels and headboats fishing in the Gulf EEZ for reef fish have permits. NMFS permit records provided in January 2000 indicated that 1,216 vessels fishing from Gulf ports, including the Florida Keys, had the coastal migratory pelagics permit and 1,171 vessels had the reef fish permit (Tables 3 and 4). The number of permitted vessels is less than that documented (1,367 vessels) in Table 1 by Holland (1998) in the charter vessel surveys but of those vessels some fish within state waters rather than the EEZ. However, by August 2000 the number of vessels with charter vessel permits was 1,680 (Tables 11, 11a and 11b).

## 2.0 HISTORY OF MANAGEMENT

### 2.1 Reef Fish Fishery

Species in the Gulf of Mexico Reef Fish FMP

Balistidae--Triggerfishes	
Gray triggerfish	<i>Balistes capriscus</i>
Carangidae--Jacks	
Greater amberjack	<i>Seriola dumerili</i>
Lesser amberjack	<i>Seriola fasciata</i>
Almaco jack	<i>Seriola rivoliana</i>
Banded rudderfish	<i>Seriola zonata</i>
Labridae--Wrasses	
Hogfish	<i>Lachnolaimus maximus</i>
Lutjanidae--Snappers	
Queen snapper	<i>Etelis oculatus</i>
Mutton snapper	<i>Lutjanus analis</i>
Schoolmaster	<i>Lutjanus apodus</i>
Blackfin snapper	<i>Lutjanus buccanella</i>
Red snapper	<i>Lutjanus campechanus</i>
Cubera snapper	<i>Lutjanus cyanopterus</i>
Gray (mangrove) snapper	<i>Lutjanus griseus</i>
Dog snapper	<i>Lutjanus jocu</i>
Mahogany snapper	<i>Lutjanus mahogoni</i>
Lane snapper	<i>Lutjanus synagris</i>
Silk snapper	<i>Lutjanus vivanus</i>
Yellowtail snapper	<i>Ocyurus chrysurus</i>
Wenchman	<i>Pristipomoides aquilonaris</i>
Vermilion snapper	<i>Rhomboplites aurorubens</i>
Malacanthidae--Tilefishes	
Goldface tilefish	<i>Caulolatilus chrysops</i>
Blackline tilefish	<i>Caulolatilus cyanops</i>
Anchor tilefish	<i>Caulolatilus intermedius</i>
Blueline tilefish	<i>Caulolatilus microps</i>
(Golden) Tilefish	<i>Lopholatilus chamaeleonticeps</i>
Serranidae--Groupers	
Dwarf sand perch	<i>Diplectrum bivittatum</i>
Sand perch	<i>Diplectrum formosum</i>
Rock hind	<i>Epinephelus adscensionis</i>
*Speckled hind	<i>Epinephelus drummondhayi</i>
*Yellowedge grouper	<i>Epinephelus flavolimbatus</i>
Red hind	<i>Epinephelus guttatus</i>
**Jewfish	<i>Epinephelus itajara</i>
Red grouper	<i>Epinephelus morio</i>

*Misty grouper	<i>Epinephelus mystacinus</i>
*Warsaw grouper	<i>Epinephelus nigritus</i>
*Snowy grouper	<i>Epinephelus niveatus</i>
**Nassau grouper	<i>Epinephelus striatus</i>
Black grouper	<i>Mycteroperca bonaci</i>
Yellowmouth grouper	<i>Mycteroperca interstitialis</i>
Gag	<i>Mycteroperca microlepis</i>
Scamp	<i>Mycteroperca phenax</i>
Yellowfin grouper	<i>Mycteroperca venenosa</i>

\* deep-water groupers

\*\* protected groupers

### 2.1.1 FMP Amendments

The Reef Fish FMP was implemented in November, 1984. The regulations, designed to rebuild declining reef fish stocks, included: (1) prohibitions on the use of fish traps, roller trawls, and powerhead-equipped spear guns within an inshore stressed area; (2) a minimum size limit of 13 inches total length (TL) for red snapper with the exception that for-hire boats were exempted until 1987 and each angler could keep 5 undersize fish; and (3) data reporting requirements.

The NMFS has collected commercial landings data since the early 1950's, recreational harvest data since 1979, and in 1984 initiated a dockside interview program to collect more detailed data on commercial harvest. The first red snapper assessment in 1988 indicated that red snapper was significantly overfished and that reductions in fishing mortality rates (F) of as much as 60 to 70 percent were necessary to rebuild red snapper to a recommended 20 percent spawning potential ratio (SPR). The 1988 assessment also identified shrimp trawl bycatch as a significant source of mortality.

**Amendment 1** to the Reef Fish Fishery Management Plan, implemented in 1990, set as a primary objective of the FMP the stabilization of long-term population levels of all reef fish species by establishing a survival rate of biomass into the stock of spawning age to achieve at least 20 percent spawning stock biomass per recruit (SSBR), relative to the SSBR that would occur with no fishing. It set a red snapper 7-fish recreational bag limit and 3.1 million pound commercial quota that together were to reduce fishing mortality by 20 percent and begin a rebuilding program for the stock. This amendment also established a 5-fish recreational bag limit and 11.0 million pound commercial quota<sup>1</sup> for groupers, with the commercial quota divided into a 9.2 million pound shallow-water quota and a 1.8 million pound deep-water quota. A framework procedure for specification of total allowable catch (TAC) was created to allow for annual management changes, and a target date for achieving

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<sup>1</sup> These values have been subsequently modified to correct for revisions adopted in the gutted to whole weight ratio. Historically, the conversion ratio used was 1.18, subsequently, the ratio has been corrected and 1.05 is used. This results in these values being 9.8, 8.2 and 1.6 million pounds respectively, for total, shallow-water and deep-water grouper quotas (e.g.,  $11.0 \div 1.18 \times 1.05 = 9.8$ ). There is no impact on the commercial fishery from the revision as fish have always been reported in gutted weight and that data is transformed to whole weight for NMFS records.

the 20 percent SSBR goal was set at January 1, 2000. This amendment also established a longline and buoy gear boundary inshore of which the directed harvest of reef fish with longlines and buoy gear was prohibited, and the retention of reef fish captured incidentally in other longline operations (e.g., shark) was limited to the recreational bag limit. Subsequent changes to the longline/buoy boundary could be made through the framework procedure for specification of TAC.

**Amendment 2**, implemented in 1990, prohibited the harvest of jewfish to provide complete protection for this species in Federal waters in response to indications that the population abundance throughout its range was greatly depressed. This amendment was initially implemented by emergency rule.

In November, 1990, NMFS announced that anyone entering the commercial reef fish fishery in the Gulf of Mexico and South Atlantic after a control date of November 1, 1989, may not be assured of future access to the reef fish fishery if a management regime is developed and implemented that limits the number of participants in the fishery. The purpose of this announcement was to establish a public awareness of potential eligibility criteria for future access to the reef fish resource, and does not prevent any other date for eligibility or other method for controlling fishing effort from being proposed and implemented.

At the direction of the Council, the Reef Fish Scientific Assessment Panel met in March 1990 and reviewed the 1990 NMFS Red Snapper Stock Assessment. The recommendation of the panel at that time was to close the directed fishery because the allowable biological catch (ABC) was being harvested as bycatch of the shrimp trawl fishery. No viable alternatives were identified that would achieve the 20 percent SPR goal by the year 2000 without closure of the directed fishery; because no means existed for reducing trawl bycatch. As a result, **Amendment 3**, implemented in July 1991, provided additional flexibility in the annual framework procedure for specifying TAC by allowing the target date for rebuilding an overfished stock to be changed depending on changes in scientific advice, except that the rebuilding period cannot exceed 1.5 times the generation time of the species under consideration. It revised the FMP's primary objective, definitions of optimum yield and overfishing and framework procedure for TAC by replacing the 20 percent SSBR target with 20 percent SPR. The amendment also transferred speckled hind from the shallow-water grouper quota category to the deep-water grouper quota category and established a new target year for recovery of the red snapper stock to the 20 percent SPR goal of 2007.

The 1992 commercial red snapper fishery opened on January 1 and closed after just 53 days when a derby fishery developed and the quota was quickly filled. An emergency rule, implemented in 1992 by NMFS at the request of the Council, reopened the red snapper fishery from April 3, 1992 through May 14, 1992 with a 1,000 pound trip limit. This rule was implemented to alleviate economic and social upheavals that occurred as a result of the 1992 red snapper commercial quota being rapidly filled. Although this emergency rule resulted in a quota overrun of approximately 600,000 pounds, analysis by NMFS biologists determined that this one time overrun would not prevent the red snapper stock from attaining its target 20 percent SPR.

**Amendment 4**, implemented in May 1992, established a moratorium on the issuance of new reef fish permits for a maximum period of three years. The moratorium was created to moderate short-term future increases in fishing effort and to attempt to stabilize fishing mortality while the Council considers a more comprehensive effort limitation program. It allows the transfer of permits between vessels owned by the permittee or between individuals when the permitted vessel is transferred. Amendment 4 also changed the time of the year that TAC is specified from April to August and included additional species in the reef fish management unit.

**Amendment 5**, implemented in February 1994, established restrictions on the use of fish traps in the Gulf of Mexico EEZ; implemented a three year moratorium on the use of fish traps by creating a fish trap endorsement and issuing the endorsement only to fishermen who had submitted logbook records of reef fish landings from fish traps between January 1, 1991, and November 19, 1992; created a special management zone (SMZ) with gear restrictions off the Alabama coast; created a framework procedure for establishing future SMZ's; required that all finfish except for oceanic migratory species be landed with head and fins attached; established a schedule to gradually raise the minimum size limit for red snapper to 16 inches over a period of five years; and closed the region of Riley's Hump (near Dry Tortugas, Florida) to all fishing during May and June to protect mutton snapper spawning aggregations.

An Emergency Rule effective December 30, 1992 created a red snapper endorsement to the reef fish permit for the start of the 1993 season. The endorsement was issued to owners or operators of federally permitted reef fish vessels who had annual landings of at least 5,000 pounds of red snapper in two of the three years from 1990 through 1992. For the duration of the emergency rule, while the commercial red snapper fishery was open, permitted vessels with red snapper endorsements were allowed a 2,000 pound possession limit of red snapper, and permitted vessels without the endorsement were allowed 200 pounds. This emergency action was initially effective for 90 days, and was extended for an additional 90 days with the concurrence of NMFS and the Council. A related emergency rule delayed the opening of the 1993 commercial red snapper season until February 16 to allow time for NMFS to process and issue the endorsements.

**Amendment 6**, implemented in June 1993, extended the provisions of the emergency rule for red snapper endorsements for the remainder of 1993 and 1994, unless replaced sooner by a comprehensive effort limitation program. In addition, it allowed the trip limits for qualifying and non-qualifying permitted vessels to be changed under the framework procedure for specification of TAC.

**Amendment 7**, implemented in February 1994, established reef fish dealer permitting and record keeping requirements; allowed transfer of fish trap permits and endorsements between immediate family members during the fish trap permit moratorium; and allowed transfer of other reef fish permits or endorsements in the event of the death or disability of the person who was the qualifier for the permit or endorsement. A proposed provision of this amendment that would have required permitted vessels to sell harvested reef fish only to permitted dealers was disapproved by the Secretary of Commerce and was not implemented.

**Amendment 8**, which proposed establishment of a red snapper Individual Transferable Quota (ITQ) system, was approved by NMFS and final rules were published in the Federal Register on November 29, 1995. This amendment provided for an initial allocation of percentage shares of the commercial red snapper quota to vessel owners and historical operators based on fishermen's historical participation in the fishery during the years 1990-1992. It also set a four year period for harvest under the ITQ system, during which time the Council and NMFS would monitor and evaluate the program and decide whether to extend, terminate or modify it. Amendment 8 also established a special appeals board, created by the Council, to consider requests from persons who contest their initial allocations of shares or determination of historical captains. The appeals board was originally scheduled to meet during January 1996, and the ITQ system itself was to become operational in April 1996. However, the Federal government shutdown of December 1995- January 1996 forced an indefinite postponement of the appeals board meetings, and concerns about Congressional funding of the ITQ system made it inadvisable for the ITQ system to become operational, pending Congressional action. In October 1996, Congress, through re-authorization of the Magnuson-Stevens Act, repealed the red snapper ITQ system and prohibited Councils from submitting, or NMFS from approving and implementing, any new individual fishing quota program before October 1, 2000.

**Amendment 9**, implemented in July 1994, provided for collection of red snapper landings and eligibility data from commercial fishermen for the years 1990 through 1992. The purpose of this data collection was to evaluate the initial impacts of the limited access measures being considered under Amendment 8 and to identify fishermen who may qualify for initial participation under a limited access system. This amendment also extended the reef fish permit moratorium and red snapper endorsement system through December 31, 1995, in order to continue the existing interim management regime until longer term measures could be implemented. The Council received the results of the data collection in November 1994, at which time consideration of Amendment 8 resumed.

Withdrawn **Amendment 10** would have extended the validity of additional fish trap endorsements for the duration of the fish trap moratorium that was implemented under Amendment 5. These additional endorsements were to have been issued under an emergency rule, requested in March 1994, to alleviate economic hardships after the Council heard from fishermen who entered the fish trap fishery after the November 19, 1992, cutoff date and stated that they were unaware of the impending moratorium. The Council rejected the proposed amendment in May 1994 after NMFS stated that it had notified fishermen of the pending moratorium and fish trap endorsement criteria during the time between Council final action and NMFS implementation if they asked about fish trap rules or if they requested application materials and NMFS was aware that it was for purposes of entering the fish trap fishery. The Council also considered arguments that the change in qualifying criteria circumvented the intent of the fish trap moratorium to halt expansion of the fish trap fishery at the November 19, 1992, level. After the Council rejected Amendment 10, NMFS subsequently rejected the emergency request.

**Amendment 11** was partially approved by NMFS and implemented in January 1996. Approved provisions included: (1) limit sale of Gulf reef fish by permitted vessels to permitted reef fish dealers; (2) require that permitted reef fish dealers purchase reef fish caught in Gulf Federal waters only from permitted vessels; (3) allow transfer of reef fish permits and fish trap endorsements in the event of death or disability; (4) implement a new reef fish permit moratorium for no more than 5 years or until December 31, 2000, while the Council considers limited access for the reef fish fishery; (5) allow permit transfers to other persons with vessels by vessel owners (not operators) who qualified for their reef fish permit; (6) allow a one time transfer of existing fish trap endorsements to permitted reef fish vessels whose owners have landed reef fish from fish traps in Federal waters, as reported on logbooks received by the Science and Research Director of NMFS from November 20, 1992, through February 6, 1994; and (7) establish a charter vessel/headboat permit. NMFS disapproved a proposal to redefine Optimum Yield (OY) from 20 percent SPR (the same level as overfishing) to an SPR corresponding to a fishing mortality rate of  $F_{0.1}$  until an alternative operational definition that optimizes ecological, economic, and social benefits to the Nation could be developed. In April 1997, the Council resubmitted the OY definition with a new proposal to redefine OY as 30 percent SPR. The re-submission document was disapproved by NMFS in April 1998, when NMFS determined that an OY target of 30 percent SPR would risk overfishing of 15 species that change sex and are believed, by NMFS, to be less resilient to overfishing as they mature. A new OY target was developed as part of the Council's Generic Amendment to implement new provisions of the Sustainable Fisheries Act of 1996.

Following the Congressional repeal of the red snapper ITQ system in Amendment 8, an emergency interim action was published in the *Federal Register* on January 2, 1996, to extend the red snapper endorsement system for 90 days. That emergency action was superseded by another emergency action, published in the *Federal Register* on February 29, 1996, that extended the red snapper endorsement system through May 29, 1996, and subsequently, by agreement of NMFS and the Council, for an additional 90 days until August 27, 1996.

**Amendment 12**, submitted in December 1995 and implemented in January 1997, reduced the greater amberjack bag limit from 3 fish to 1 fish per person, and created an aggregate bag limit of 20 reef fish for all reef fish species not having a bag limit. The NMFS disapproved a proposed provision, for the commercial sector, to cancel the automatic red snapper size limit increases to 15 inches TL in 1996 and 16 inches TL in 1998; NMFS also disapproved, for the recreational sector, a proposal to include lesser amberjack and banded rudderfish along with greater amberjack in an aggregate 1-fish bag limit and 28-inch fork length (FL) minimum size limit.

**Amendment 13**, implemented in September 1996, further extended the red snapper endorsement system through the remainder of 1996 and, if necessary, through 1997, in order to give the Council time to develop a permanent limited access system that was in compliance with the new provisions of the Magnuson-Stevens Act.

In late 1996, the Reef Fish Stock Assessment Panel (RFSAP) reviewed a new stock assessment on vermilion snapper and concluded that the vermilion snapper fishery in the Gulf of Mexico,

while not currently overfished, was showing typical signs of overfishing. Given that SPR was decreasing at current fishing rates and that the proposed optimum yield level is 30 percent SPR, the RFSAP recommended that fishing mortality be reduced to a rate corresponding to  $F_{30\% SPR}$ , or  $F = 0.32$ . The RFSAP did not have sufficient information to assess the impact of closed seasons or other measures, but suggested that a 10-inch TL minimum size limit would be an effective intermediate measure until a new stock assessment and additional analysis could be completed. In March 1997, the Council requested that NMFS increase the minimum size limit from 8 inches TL to 10 inches TL under the new interim measures provision of the Magnuson-Stevens Act, while a permanent increase to 10 inches TL was developed through Amendment 15.

**Amendment 14**, implemented in March and April, 1997, provided for a 10 year phase-out for the fish trap fishery; allowed transfer of fish trap endorsements for the first two years and thereafter only upon death or disability of the endorsement holder, to another vessel owned by the same entity, or to any of the 56 individuals who were fishing traps after November 19, 1992, and were excluded by the moratorium; and prohibited the use of fish traps west of Cape San Blas, Florida. The amendment also provided the Regional Administrator (RA) of NMFS with authority to reopen a fishery prematurely closed before the allocation was reached and modified the provisions for transfer of commercial reef fish vessel permits.

**Amendment 15**, implemented in January 1998, established a permanent two-tier red snapper license limitation system to replace the temporary red snapper endorsement system. Under the new system, Class 1 licenses and initial 2,000 pound trip limits were issued to red snapper endorsement holders as of March 1, 1997, and Class 2 licenses and initial 200 pound trip limits were issued to other holders of reef fish permits as of March 1, 1997, who had any landings of red snapper between January 1, 1990 and March 1, 1997. Vessels with neither a Class 1 or Class 2 red snapper license were prohibited from commercial harvest of red snapper. Licences were made fully transferable. The commercial red snapper season was split in two, with two thirds of the quota allocated to a February 1 opening and the remaining quota to a September 1 opening; the commercial fishery would open from noon of the first day to noon of the fifteenth day of each month during the commercial season. Amendment 15 also prohibited harvest of reef fish from traps other than permitted reef fish traps, stone crab traps, or spiny lobster traps; permanently increased the vermilion snapper size limit from 8 inches TL to 10 inches TL; removed all species of sea basses, grunts and porgies from the Reef Fish FMP; closed the commercial greater amberjack fishery Gulf-wide during the months of March, April and May; and removed sand perch and dwarf sand perch from the recreational 20-reef fish aggregate bag limit.

**Amendment 16A**, partially approved by NMFS in March, 1999, was implemented in January 2000. NMFS disapproved the proposed prohibition the use of fish traps south of 25.05 degrees north latitude after February 7, 2001. In the remaining areas where fish traps are allowed, the status quo 10-year phase-out would be maintained. The amendment also proposed allowing spiny lobster and stone crab vessels with reef fish permits to retain reef fish, but it would prohibit the possession of reef fish displaying the condition of "trap rash" aboard any vessel except for vessels possessing a valid fish trap endorsement. In addition, the amendment

proposed additional reporting requirements for fish trap vessels, and called for NMFS to design a vessel monitoring system for fish trap vessels, to be approved by the Council prior to implementation.

**Amendment 16B**, implemented in November 1999, included a size limit of 14 to 22 inches FL and aggregate bag limit of 5 fish for banded rudderfish and lesser amberjack and excluded both species from the aggregate 20-fish bag limit. It included a 12-inch TL size limit for cubera snapper, dog snapper, mahogany snapper, schoolmaster, gray triggerfish, and hogfish. It included a 16-inch TL size limit for mutton snapper and scamp. It proposed a bag limit of 5 fish for hogfish and 1 fish per vessel for speckled hind and warsaw grouper and removed queen triggerfish from management under the FMP. The amendment was submitted to NMFS for implementation in January 1999 and approved in July 1999.

**Amendment 17** was submitted to NMFS in September 1999 and approved March 16, 2000. It will extend the reef fish permit moratorium for another five years, from the existing expiration date of December 31, 2000 to December 31, 2005, unless replaced sooner by a comprehensive controlled access system.

**Amendment 20** was submitted to NMFS in June 2001 and approved in May 2002. The amendment established a 3-year moratorium on the issuance of charter vessel or headboat (for-hire) permits for the reef fish fishery, coastal migratory pelagics, and dolphin/wahoo (if FMP implemented) fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS promulgated the charter moratorium regulations (67 FR, 43558, June 28, 2002) to implement Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Council. Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations.

## **Background**

NMFS, in response to a request from a recreational for-hire industry representative, reviewed the administrative record to determine if the initial eligibility requirements published in the final rule establishing a charter vessel/headboat permit moratorium were consistent with the actions approved by the Council. After reviewing the administrative record at its September 9-12, 2002, meeting, NMFS determined that the amendment contained an error that did not correctly reflect the actions approved by the Council.

At its November 12-15, 2002, meeting, in Key Largo, Florida, the Council was briefed by NMFS Southeast Regional Office staff regarding a proposed course of action. As a result, the Council provided clarification on the initial eligibility criterion published in the final rule establishing a charter vessel/headboat permit moratorium. The conclusion of the Council was

to request that the Secretary of Commerce implement via emergency action the following criteria: It was the intent of the Council that under C-1- to provide for fully transferrable reef fish or coastal migratory pelagics charter/headboat permits to individual/charter vessels who held valid permits on March 29, 2001, or who held a valid permit during the preceding year, or had applied for such permits received in the NMFS office by March 29, 2001. The intent of the Council was to cap the effort and passenger capacity of vessels as on March 29, 2001 (motion carried by a vote of 12 to 3 with 2 abstentions).

This clarification by the Council would eliminate one provision of the eligibility criterion in the final rule as follows: (1) An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002).

In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendment, and to fully comply with Magnuson-Stevens Act requirements, NMFS prepared this corrected amendment to address this error and, as such, to reflect the actions approved by the Council. Specifically, this corrected amendment will eliminate one eligibility criteria in the final rule which states that the charter vessel headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: (1) An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). This corrected amendment would also reopen the application process for obtaining Gulf charter vessel/headboat moratorium permits and extend the applicable deadlines; extend the expiration dates of valid or renewable open access permits for these fisheries; and extend the expiration date of the moratorium to account for the delay in implementation.

**Emergency Rule:** The regulations promulgated under the charter vessel moratorium (67 FR 43558, June 28, 2002), also require all charter operators in the Gulf of Mexico exclusive economic zone (EEZ) have a valid limited access "moratorium permit," as opposed to the prior open access charter permit, beginning December 26, 2002. If these limited access permits had not been issued prior to this date, all legal fishing activities conducted by the recreational for-hire sector in the Gulf EEZ would have closed. Cessation of these fishing operations would have resulted in severe social and economic disruption to the for-hire sector and those coastal communities dependent on these fisheries. In order to ensure that no qualified participants in the fishery were wrongfully excluded under the moratorium, due to an error in the final rule, and to fully comply with Magnuson-Stevens Act requirements, NMFS promulgated an emergency rule (67 FR 77193, December 17, 2002) that extend certain permit-related deadlines contained in the final rule implementing the charter vessel/headboat permit moratorium for reef fish and coastal migratory pelagic fish in the Gulf of Mexico. The emergency rule: 1) deferred the date for having a "moratorium permit" aboard vessels operating in these fisheries until June 16, 2003; 2) automatically extended the expiration date of valid or renewable "open access" permits for these fisheries until June 16, 2003; 3) extended the deadline for issuance of "moratorium permits" to no later than June 6, 2003; and 4) extended the deadline for resolution of appeals to February 18, 2003, or 30 days after an oral hearing, if applicable. Additionally, the emergency rule allowed those persons who were ineligible under the promulgated regulations to receive their open access charter

vessel/headboat permits until they can obtain a new permit under the revised moratorium eligibility criteria approved by the Council. Further, NMFS is currently issuing limited access Gulf charter vessel/headboat permits to those who qualified under the existing final rule.

### **2.1.2 Regulatory Amendments**

A March 1991 regulatory amendment reduced the red snapper TAC from 5.0 million pounds to 4.0 million pounds, allocated with a commercial quota of 2.04 million pounds and a 7-fish recreational daily bag limit (1.96 million pound recreational allocation) beginning in 1991. This amendment also contained a proposal by the Council to effect a 50 percent reduction of red snapper bycatch in 1994 by the offshore EEZ shrimp trawler fleet, to occur through the mandatory use of finfish excluder devices on shrimp trawls, reductions in fishing effort, area or season closures of the shrimp fishery, or a combination of these actions. This combination of measures was projected to achieve a 20 percent SPR by the year 2007. The 2.04 million pound quota was reached on August 24, 1991, and the red snapper fishery was closed to further commercial harvest in the EEZ for the remainder of the year. In 1992, the commercial red snapper quota remained at 2.04 million pounds. However, extremely heavy fishing effort and harvest rates, commonly referred to as a "derby fishery," ensued. The quota was filled in just 53 days, and the commercial red snapper fishery was closed on February 22, 1992.

A July 1991 regulatory amendment provided a one-time increase in the 1991 quota for shallow-water groupers from 9.2 million pounds to 9.9<sup>2</sup> million pounds. This action was taken to provide the commercial fishery an opportunity to harvest 0.7 million pounds that went unharvested in 1990 due to an early closure of the fishery. NMFS had projected the 9.2 million pound quota to be reached on November 7, 1990, but subsequent data showed that the actual harvest was 8.5 million pounds.

A November 1991 regulatory amendment raised the 1992 commercial quota for shallow-water groupers from 8.2 million pounds to 9.8 million pounds, after a red grouper stock assessment indicated that the red grouper SPR was substantially above the Council's minimum target of 20 percent, and the Council concluded that the increased quota would not materially impinge on the long-term viability of at least the red grouper stock.

An October 1992 regulatory amendment raised the 1993 red snapper TAC from 4.0 million pounds to 6.0 million pounds, allocated with a commercial quota of 3.06 million pounds and a recreational allocation of 2.94 million pounds (to be implemented by a 7-fish recreational daily bag limit). The amendment also changed the target year to achieve a 20 percent red snapper SPR from 2007 to 2009, based on the FMP provision that the rebuilding period may be for a time span not exceeding 1.5 times the potential generation time of the stock and an estimated red snapper generation time of 13 years (Goodyear 1992).

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<sup>2</sup> The corrected 1991 quota, using the revised conversion factor, was 8.8 million pounds. The corrected 1990 actual harvest was 7.6 million pounds.

A withdrawn 1993 regulatory amendment would have moved the longline and buoy gear restricted area boundary off central and south-central Florida inshore from the 20 fathom isobath to the 15 fathom isobath for a one-year period beginning January 1, 1994. It was withdrawn at industry's request by the Council in January 1994 amid concerns that it would lead to a quota closure and a concern by the NMFS Southeast Fisheries Science Center (SEFSC) that there were inadequate experimental controls to properly evaluate the impact of the action.

An October 1993 regulatory amendment set the opening date of the 1994 commercial red snapper fishery as February 10, 1994, and restricted commercial vessels to landing no more than one trip limit per day. The purpose of this amendment was to facilitate enforcement of the trip limits, minimize fishing during hazardous winter weather, and ensure that the commercial red snapper fishery is open during Lent, when there is increased demand for seafood. The red snapper TAC was retained at the 1993 level of 6 million pounds, with a 3.06 million pound commercial quota and 2.94 million pound recreational allocation. The shallow-water grouper regulations were also evaluated but no change was made. The shallow-water grouper TAC, which previously had only been specified as a commercial quota, was specified as a total harvest of 15.1 million pounds (with 9.8 million pounds allocated to the commercial quota) and 20-inch TL minimum size limit for gag, red, Nassau, yellowfin and black grouper.

An October 1994 regulatory amendment retained the 6 million pound red snapper TAC and commercial trip limits and set the opening date of the 1995 commercial red snapper fishery as February 24, 1995. However, because the recreational sector exceeded its 2.94 million pound red snapper allocation each year since 1992, this regulatory amendment reduced the daily bag limit from 7 fish to 5 fish, and increased the minimum size limit for recreational fishing from 14 inches to 15 inches a year ahead of the scheduled automatic increase.

A rejected December 1994 regulatory amendment would have reduced the minimum size limit for red grouper from 20 inches TL to 18 TL inches in response to complaints from the commercial sector that regulations were too restrictive to allow them to harvest their quota of shallow-water grouper. The NMFS rejected the proposed action because of concern that it would result in the recreational sector exceeding its allocation. In March 1995 a revised regulatory amendment was submitted to NMFS that would reduce the red grouper minimum size limit to 18 inches TL for only the commercial sector. That regulatory amendment was rejected by NMFS because newly discovered biases in the growth rate data collected in recent years that resulted in uncertainty about the current status of the red grouper stock. Further analysis by NMFS biologists and the RFSAP reduced that uncertainty to the point where the status of red grouper stocks was determined to be most likely at or above 27 percent SPR, well above the overfishing threshold. In September 1995 a second revised regulatory amendment was submitted to NMFS to reduce the commercial red grouper minimum size limit to 18 inches TL. This second revision was rejected by NMFS because they felt it would create user conflicts, produce long-term economic losses to commercial fishermen, allow the harvest of juvenile fish, and potentially lead to the commercial quota being filled early and create a derby fishery.

A regulatory amendment to set the 1996 red snapper TAC, dated December 1995, raised the red snapper TAC from 6 million pounds to 9.12 million pounds, with 4.65 million pounds allocated to the commercial sector and 4.47 million pounds allocated to the recreational sector. Recreational minimum size and bag limits remained at 5 fish and 15 inches TL respectively. The recovery target date to achieve 20 percent SPR was extended to the year 2019, based on new biological information that red snapper live longer and have a longer generation time than previously believed. A March 1996 addendum to the regulatory amendment split the 1996 and 1997 commercial red snapper quotas into two seasons each, with the first season opening on February 1 with a 3.06 million pound quota, and the second season opening on September 15 with the remainder of the annual quota.

A March 1997 regulatory amendment changed the opening date of the second 1997 commercial red snapper season from September 15 to September 2 at noon and closed the season on September 15 at noon; thereafter the commercial season was opened from noon of the first day to noon of the fifteenth day of each month until the 1997 quota was reached. It also complied with the new Magnuson-Stevens Act requirement that recreational red snapper be managed under a quota system by authorizing the NMFS RA to close the recreational fishery in the EEZ at such time as projected to be necessary to prevent the recreational sector from exceeding its allocation.

Subsequent to implementation of a recreational red snapper quota, the recreational red snapper fishery filled its 1997 quota of 4.47 million pounds, and was closed on November 27, 1997, for the remainder of the calendar year.

A November 1997 regulatory amendment canceled a planned increase in the red snapper minimum size limit to 16 inches TL that had been implemented through Amendment 5, and retained the 15-inch TL minimum size limit.

A January 1998 regulatory amendment proposed maintaining the status quo red snapper TAC of 9.12 million pounds, but set a zero bag limit for the captain and crew of for-hire recreational vessels in order to extend the recreational red snapper quota season. The NMFS provisionally approved the TAC, releasing 6 million pounds, with release of all or part of the remaining 3.12 million pounds to be contingent upon the capability of shrimp trawl bycatch reduction devices (BRDs) to achieve better than a 50 percent reduction in juvenile red snapper shrimp trawl mortality. The zero bag limit for captain and crew of for-hire recreational vessels was not implemented. Following an observer monitoring program of shrimp trawl BRDs conducted during the Summer of 1998, NMFS concluded that BRDs would be able to achieve the reduction in juvenile red snapper mortality needed for the red snapper recovery program to succeed, and the 3.12 million pounds of TAC held in reserve was released on September 1, 1998.

An August 1999 regulatory amendment implemented in June 2000 increased the commercial size limit for gag from 20 to 24 inches TL, the recreational size limit for gag from 20 to 22 inches TL with a proposed 1-inch increase in size each year thereafter until it reaches 24 inches TL. It prohibits commercial sales of gag, black, and red groupers each year from

February 15 to March 15 (during the peak of gag spawning season). It also establishes 2 marine reserves on gag spawning aggregation sites that will be closed year-round to all fishing. The 2 sites cover 219 square nautical miles near the 40-fathom contour, off west central Florida.

A February 2000 regulatory amendment, implemented in August 2000 maintained the status quo red snapper TAC of 9.12 million pounds for the next two years, pending an annual review of the assessment, increased the red snapper recreational minimum size limit from 15 inches to 16 inches total length, set the red snapper recreational bag limit at 4 fish, reinstated the red snapper recreational bag limit for captain and crew of recreational for-hire vessels, set the recreational red snapper season to be April 15 through October 31, subject to revision by the Regional Administrator to accommodate reinstating the bag limit for captain and crew, set the commercial red snapper Spring season to open on February 1 and be open from noon on the 1st to noon on the 10th of each month until the Spring sub-quota is reached, set the commercial red snapper Fall season to open on October 1 and be open from noon on the 1st to noon on the 10th of each month until the remaining commercial quota is reached, retain the red snapper commercial minimum size limit at status quo 15 inches total length, and allocate the red snapper commercial season sub-quota at 2/3 of the commercial quota, with the Fall season sub-quota as the remaining commercial quota.

## 2.2 Coastal Migratory Pelagics Fishery

Species in the Fishery for Coastal Migratory Pelagics:

King mackerel	<i>Scomberomorus cavalla</i>
Spanish mackerel	<i>S. maculatus</i>
Cobia	<i>Rachycentron canadum</i>
Cero	<i>S. regalis</i>
Little tunny	<i>Euthynnus alleteratus</i>
Dolphin	<i>Coryphaena hippurus</i>
Bluefish (Gulf of Mexico only)	<i>Pomatomus saltatrix</i>

The Coastal Migratory Pelagics "Mackerel" FMP, approved in 1982 and implemented by regulations effective in February of 1983, treated king and Spanish mackerel each as one U.S. stock. Allocations were established for recreational and commercial fisheries, and the commercial allocation was divided between net and hook-and-line fishermen.

### 2.2.1 FMP Amendments

**Amendment 1**, implemented in September of 1985, provided a framework procedure for pre-season adjustment of TAC, revised king mackerel maximum sustainable yield (MSY) downward, recognized separate Atlantic and Gulf migratory groups of king mackerel, and established fishing permits and bag limits for king mackerel. Commercial allocations among gear users, except purse seines that were allowed 6 percent of the commercial allocation of TAC, were eliminated. The Gulf commercial allocation for king mackerel was divided into

Eastern and Western Zones for the purpose of regional allocation, with 69 percent of the remaining allocation provided to the Eastern Zone and 31 percent to the Western Zone.

**Amendment 2**, implemented in July of 1987, revised Spanish mackerel MSY downward, recognized two migratory groups, established allocations of TAC for the commercial and recreational sectors, and set commercial quotas and bag limits. Charter vessel permits were required, and it was clarified that TAC must be set below the upper range of ABC. The use of purse seines on overfished stocks was prohibited, and their allocation of TAC was redistributed under the 69 percent/31 percent split.

**Amendment 3** was partially approved in August 1989, revised, resubmitted, and approved in April 1990. It prohibited drift gill nets for coastal pelagics and purse seines for the overfished groups of mackerels.

**Amendment 4**, implemented in October 1989, reallocated Spanish mackerel equally between recreational and commercial fishermen on the Atlantic group.

**Amendment 5**, implemented in August 1990, made a number of changes in the management regime which:

- Extended the management area for Atlantic groups of mackerels through the Mid-Atlantic Council's area of jurisdiction;
- Revised problems in the fishery and plan objectives;
- Revised the fishing year for Gulf Spanish mackerel from July-June to April-March;
- Revised the definition of "overfishing";
- Added cobia to the annual stock assessment procedure;
- Provided that the South Atlantic Fishery Management Council (SAFMC) will be responsible for pre-season adjustments of TACs and bag limits for the Atlantic migratory groups of mackerels while the Gulf Council will be responsible for Gulf migratory groups;
- Continued to manage the two recognized Gulf migratory groups of king mackerel as one until management measures appropriate to the eastern and western groups can be determined;
- Re-defined recreational bag limits as daily limits;
- Deleted a provision specifying that bag limit catch of mackerel may be sold;
- Provided guidelines for corporate commercial vessel permits;
- Specified that Gulf king mackerel may be taken only by hook-and-line and run-around gill nets;
- Imposed a bag limit of two cobia per person per day; and,
- Established a minimum size of 12 inches (30.5 cm.) FL or 14 inches (35.6 cm.) TL for king mackerel and included a definition of "conflict" to provide guidance to the Secretary.

**Amendment 6**, implemented in November 1992, made the following changes:

- Identified additional problems and an objective in the fishery;
- Provided for rebuilding overfished stocks of mackerels within specific periods;
- Provided for biennial assessments and adjustments;
- Provided for more seasonal adjustment actions;
- Allowed for Gulf king mackerel stock identification and allocation when appropriate;
- Provided for commercial Atlantic Spanish mackerel possession limits;
- Changed commercial permit requirements to allow qualification in one of three preceding years;
- Discontinued the reversion of the bag limit to zero when the recreational quota is filled;
- Modified the recreational fishing year to the calendar year; and,
- Changed the minimum size limit for king mackerel to 20 inches FL, and changed all size limit measures to fork length only.

**Amendment 7**, implemented in November 1994, equally divided the Gulf commercial allocation in the Eastern Zone at the Dade-Monroe County line in Florida. The suballocation for the area from Monroe County through Western Florida is equally divided between commercial hook-and-line and net gear users.

**Amendment 8**, implemented in March 1998, made the following changes to the management regime:

- Clarified ambiguity about allowable gear specifications for the Gulf group king mackerel fishery by allowing only hook-and-line and run-around gill nets. However, catch by permitted, multi-species vessels and bycatch allowances for purse seines were maintained;
- Established the Council's intent to evaluate the impacts of permanent jurisdictional boundaries between the GMFMC and SAFMC and development of separate FMPs for coastal pelagics in these areas;
- Established a moratorium on commercial king mackerel permits until no later than October 15, 2000, with a qualification date for initial participation of October 16, 1995;
- Increased the income requirement for a king or Spanish mackerel permit to 25 percent of earned income or \$10,000 from commercial sale of catch or charter or headboat fishing in 1 of the 3 previous calendar years, but allowed for a 1-year grace period to qualify under permits that are transferred;
- Legalized retention of up to 5 cut-off (barracuda damaged) king mackerel on vessels with commercial trip limits;
- Set an optimum yield target at 30 percent static SPR;
- Provided the SAFMC with authority to set vessel trip limits, closed seasons or areas, and gear restrictions for Gulf group king mackerel in the North Area of the Eastern Zone (Dade/Monroe to Volusia/Flagler County lines);

- Established various data consideration and reporting requirements under the framework procedure; and,
- Modified the seasonal framework adjustment measures and specifications (see Appendix I).

**Amendment 9**, implemented in April 2000, made the following changes:

- Reallocate the percentage of the commercial allocation of TAC for the North Area (Florida east coast) and South/West Area (Florida west coast) of the Eastern Zone to 46.15 percent North and 53.85 percent South/West and retain the recreational and commercial allocations of TAC at 68 percent recreational and 32 percent commercial;
- Subdivide the commercial hook-and-line king mackerel allocation for the Gulf group, Eastern Zone, South/West Area (Florida west coast) by establishing 2 sub-zones with a dividing line between the 2 sub-zones at the Collier/Lee County line;
- Establish regional allocations for the west coast of Florida based on the 2 sub-zones with 7.5 percent of the Eastern Zone allocation of TAC being allowed from Sub-zone 2 and the remaining 92.5 percent being allocated as follows:

50% - Florida east coast

50% - Florida west coast that is further subdivided:

50% - Net Fishery

50% - Hook-and-Line Fishery

- Establish a trip limit of 3,000 pounds per vessel per trip for the Western Zone;
- Establish a moratorium on the issuance of commercial king mackerel gill net endorsements and allow re-issuance of gill net endorsements to only those vessels that: (1) had a commercial mackerel permit with a gill net endorsement on or before the moratorium control date of October 16, 1995 (Amendment 8); and, (2) had landings of king mackerel using a gill net in one of the two fishing years 1995-96 or 1996-97 as verified by NMFS or trip tickets from the FDEP; allow transfer of gill net endorsements to immediate family members (son, daughter, father, mother, or spouse) only; and prohibit the use of gill nets or any other net gear for the harvest of Gulf group king mackerel north of an east/west line at the Collier/Lee County line;
- Increase the minimum size limit for Gulf group king mackerel from 20 inches to 24 inches FL; and,
- Allow the retention and sale of cut-off (damaged), legal-sized king and Spanish mackerel within established trip limits.

**Amendment 10** incorporated essential fish habitat (EFH) provisions for the SAFMC, and

**Amendment 11** included proposals for mackerel in the SAFMC's Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and other Provisions in Fishery

Management Plans of the South Atlantic Region. Both of these amendments have been implemented.

**Amendment 12**, approved May 2000, proposes to extend the commercial king mackerel permit moratorium from its current expiration date of October 15, 2000 to October 15, 2005, or until replaced with a license limitation, limited access, and/or individual fishing quota or individual transferable quota system, whichever occurs earlier.

**Amendment 14**, was submitted to NMFS in June 2001 and approved in May 2002. The amendment established a 3-year moratorium on the issuance of charter vessel or headboat (for-hire) permits for the reef fish fishery, coastal migratory pelagics, and dolphin/wahoo (if FMP implemented) fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS promulgated the charter moratorium regulations (67 FR 43558, June 28, 2002) to implement Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Council. Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations.

## **Background**

NMFS, in response to a request from a recreational for-hire industry representative, reviewed the administrative record to determine if the initial eligibility requirements published in the final rule establishing a charter vessel/headboat permit moratorium were consistent with the actions approved by the Council. After reviewing the administrative record at its September 9-12, 2002, meeting, NMFS determined that the amendment contained an error that did not correctly reflect the actions approved by the Council.

At its November 12-15, 2002, meeting, in Key Largo, Florida, the Council was briefed by NMFS Southeast Regional Office staff regarding a proposed course of action. As a result, the Council provided clarification on the initial eligibility criterion published in the final rule establishing a charter vessel/headboat permit moratorium. The conclusion of the Council was to request that the Secretary of Commerce implement via emergency action the following criteria: It was the intent of the Council that under C-1- to provide for fully transferrable reef fish or coastal migratory pelagics charter/headboat permits to individual/charter vessels who held valid permits on March 29, 2001, or who held a valid permit during the preceding year, or had applied for such permits received in the NMFS office by March 29, 2001. The intent of the Council was to cap the effort and passenger capacity of vessels as on March 29, 2001 (motion carried by a vote of 12 to 3 with 2 abstentions).

This clarification by the Council would eliminate one provision of the eligibility criterion in the final rule as follows: (1) An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002).

In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendment, and to fully comply with Magnuson-Stevens Act requirements, NMFS prepared this corrected amendment to address this error and, as such, to reflect the actions approved by the Council. Specifically, this corrected amendment will eliminate one eligibility criteria in the final rule which states that the charter vessel headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: (1) An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). This corrected amendment would also reopen the application process for obtaining Gulf charter vessel/headboat moratorium permits and extend the applicable deadlines; extend the expiration dates of valid or renewable open access permits for these fisheries; and extend the expiration date of the moratorium to account for the delay in implementation.

**Emergency Rule:** The regulations promulgated under the charter vessel moratorium (67 FR 43558, June 28, 2002), also require all charter operators in the Gulf of Mexico exclusive economic zone (EEZ) have a valid limited access "moratorium permit," as opposed to the prior open access charter permit, beginning December 26, 2002. If these limited access permits had not been issued prior to this date, all legal fishing activities conducted by the recreational for-hire sector in the Gulf EEZ would have closed. Cessation of these fishing operations would have resulted in severe social and economic disruption to the for-hire sector and those coastal communities dependent on these fisheries. In order to ensure that no qualified participants in the fishery were wrongfully excluded under the moratorium, due to an error in the rule, and to fully comply with Magnuson-Stevens Act requirements, NMFS promulgated an emergency rule (67 FR 77193, December 17, 2002) that extend certain permit-related deadlines contained in the final rule implementing the charter vessel/headboat permit moratorium for reef fish and coastal migratory pelagic fish in the Gulf of Mexico. The emergency rule: 1) deferred the date for having a "moratorium permit" aboard vessels operating in these fisheries until June 16, 2003; 2) automatically extended the expiration date of valid or renewable "open access" permits for these fisheries until June 16, 2003; 3) extended the deadline for issuance of "moratorium permits" to no later than June 6, 2003; and 4) extended the deadline for resolution of appeals to February 18, 2003, or 30 days after an oral hearing, if applicable. Additionally, the emergency rule allowed those persons who were ineligible under the promulgated regulations to receive their open access charter vessel/headboat permits until they can obtain a new permit under the revised moratorium eligibility criteria approved by the Council. Further, NMFS is currently issuing limited access Gulf charter vessel/headboat permits to those who qualify under the existing final rule.

## 2.2.2 Regulatory Amendments

Prior to the 1986 regulatory amendment, Amendment 1 established a TAC of 14.4 million pounds (MP). At the request of the Gulf Council in October 1985, NMFS implemented an emergency action in March 1986 that reduced TAC to 5.2 MP for the 1985-86 fishing year. The 1986 regulatory amendment, submitted in May 1986, set TAC for Gulf group king mackerel at 2.9 MP with a 0.93 MP commercial quota and a 1.97 MP recreational allocation. The bag limits for Gulf group king mackerel for-hire and other recreational vessels were unchanged from those established under Amendment 1, i.e., 3 fish per person per trip, excluding captain and crew, or 2 fish including captain and crew, whichever is greater. For all other vessels, the bag limit was 2 fish per person per trip. The commercial quota was allocated six percent for purse-seines, 64.5 percent for all other commercial gear in the Eastern Zone (Florida) and 29 percent for all other gear in the Western Zone (Alabama-Texas). The regulatory amendment also established criteria for allowing charter vessels to obtain commercial permits and fish as either a charter or commercial vessel. It also provided that the recreational and commercial fisheries would be closed when their respective allocations were taken. These regulatory actions were implemented on July 1, 1986.

The 1987 regulatory amendment, submitted in May 1987, proposed a reduction in TAC for Gulf group king mackerel to 2.2 MP with the commercial quota set at 0.7 MP and a recreational allocation of 1.5 MP. The purse-seine allocation was set at zero; thus the commercial allocation was divided only between the Eastern and Western Zones at 69 percent and 31 percent, respectively. The TAC for Gulf group Spanish mackerel was set at 2.5 MP with a commercial quota of 1.4 MP and a recreational allocation for 1.1 MP. The bag limit for Gulf group king mackerel remained the same; and for Gulf group Spanish mackerel, it was set at 3 fish per person per trip. These regulatory actions were implemented on June 30, 1987.

In 1988, the Council's regulatory amendment, submitted May 1988, proposed to increase TAC for Gulf group king mackerel to 3.4 MP with a commercial allocation of 1.1 MP and a recreational allocation 2.3 MP. The TAC for Gulf group Spanish mackerel was increased to 5.0 MP with 2.15 MP allocated to the recreational sector and 2.85 MP to the commercial sector. The bag limit for Gulf group Spanish mackerel was set at 4 fish off Florida and 10 fish off Alabama-Texas. These regulatory actions were implemented on July 1, 1988.

The regulatory amendment for 1989, submitted in May 1989, again proposed an increase in TAC for Gulf group king mackerel to 4.25 MP with a commercial quota 1.36 MP and a recreational allocation 2.89 MP. The bag limit remained unchanged. The TAC for Gulf group Spanish mackerel was requested to be increased to 5.25 MP, and the allocation ratio between the commercial (57 percent) and recreational (43 percent) sectors would remain unchanged, as well as the bag limit. These regulatory actions were implemented on July 1, 1989.

The regulatory amendment for 1990, submitted in May 1990, recommended that the TAC and bag limit for Gulf group king mackerel remain unchanged (4.25 MP and 2 fish per

person, or 3 fish for charter persons when the captain and crew are excluded). The TAC for Gulf group Spanish mackerel (5.25 MP) also did not change; however, the bag limits for Spanish mackerel changed to 4 fish off Florida, 3 fish off Texas, and 10 Fish off Alabama-Louisiana at the request of the states. These regulatory actions were implemented on August 1, 1990.

The 1991 regulatory amendment, submitted in May 1991, recommended that TAC for Gulf group king mackerel be increased to 5.75 MP with a 1.84 MP commercial quota and 3.91 MP recreational allocation. The bag limit for Gulf group king mackerel was modified to 2 fish off Florida and status quo (3 fish/2 fish) for Alabama-Texas (see 1986 regulatory amendment discussion above). The TAC for Gulf group Spanish mackerel was increased to 8.6 MP with a 4.9 MP commercial allocation and a 3.7 MP recreational allocation. The bag limit was modified to 3 fish off Texas, 5 fish off Florida, and 10 fish off Alabama-Louisiana. These regulatory actions were implemented on September 4, 1991.

The 1992 regulatory amendment, submitted in May 1992, proposed an increase in TAC for Gulf group king mackerel to 7.8 MP with a commercial quota of 2.50 MP and a recreational allocation of 5.3 MP. The king mackerel bag limit was reduced to 2 fish per person, including captain and crew of charter and head boats for the entire Gulf EEZ. The TAC for Gulf group Spanish mackerel remained at 8.6 MP. The bag limits for Spanish mackerel were increased to 7 fish off Texas, and 10 fish off Florida-Louisiana. These regulatory actions were implemented on September 18, 1992.

Because of increased catch on the west coast of Florida in 1992-93, an emergency action was taken by NMFS in February 1992 to add 259,000 pounds of Gulf group king mackerel to the 1992-93 TAC under a 25 fish trip limit. A second emergency action (October 1993) that was subsequently added to Amendment 7 equally divided the Eastern Zone allocation of TAC between the Florida east and west coasts. The 1993 regulatory amendment, submitted in July 1993, recommended that TAC and bag limits remain the same as in the 1992-93 fishing year for Gulf group king and Spanish mackerel. In the Eastern Zone (Florida) commercial hook and line fisheries, the trip limit for the Florida east coast was proposed at 50 fish until 50 percent of the sub-quota was taken, and then reduced to 25 fish. For the Florida west coast, no trip limit was recommended until 75 percent of the sub-quota was taken; afterwards, it would be reduced to 50 fish. These regulatory actions were implemented on November 1, 1993.

The 1994 regulatory amendment, submitted in June 1994, proposed a 25,000 pound trip limit for the gill net fishery until 90 percent of their allocation was taken, then 15,000 pounds per trip. When implementing this amendment on November 21, 1994, NMFS rejected this step down, and commercial gill net boats fishing for king mackerel in the Eastern Zone (Florida) were limited to 25,000 pounds per trip. The TAC and bag limits remained unchanged for Gulf group king mackerel; however, the trip limit for hook and line vessels on the Florida east coast was modified to 50 fish until 75 percent of their TAC allocation was taken, then it was reduced to 25 fish. The TAC and bag limits for Gulf group Spanish mackerel remained unchanged.

During the 1994-95 fishing year, mild weather, increased effort, or both, resulted in most of the commercial TAC allocation of Gulf group king mackerel for the west coast of Florida being taken before the fish migrated to the more historical fishing grounds in the Florida Keys. Consequently, the NMFS implemented an emergency rule in February 1995 that provided a supplemental allocation of 300,000 pounds under a 125 fish trip limit. The 1995 regulatory amendment, submitted in May 1995, recommended that TAC and bag limits remain unchanged for Gulf group king and Spanish mackerel. The hook-and-line trip limit for the Florida west coast of the Eastern Zone was set at 125 fish until 75 percent of the sub-quota was taken, then it became 50 fish. For the east coast of Florida, the trip limit remained at 50 fish; however, if 75 percent of the quota was not taken by March 1, the 50-fish trip limit would remain in effect until the close of the season on March 31. These regulatory actions were implemented on December 18, 1995, with the exception of the 125 fish trip limit which became effective on November 22, 1995. Additionally, a control date for the commercial king mackerel fishery was published on October 16, 1995.

The 1996 regulatory amendment, submitted in August 1996, recommended that TAC and bag limits remain unchanged for Gulf group king mackerel, except that the bag limit for captain and crew of charter and head boats was set at zero. The commercial hook-and-line trip limit for the Florida west coast of the Eastern Zone was set at 1,250 pounds per trip until 75 percent of the sub-quota was taken; subsequently, it reverted to 500 pounds per trip until the suballocation was taken and the fishery closed. For the Florida east coast hook and line fishery, the trip limit was initially set at 750 pounds, but reverted to 500 pounds when 75 percent of the suballocation was taken, provided that 75 percent of the quota was taken by February 15. If not, the trip limit remained at 750 pounds until the quota was taken or the season ended on March 31. The TAC for Gulf group Spanish mackerel was reduced to 7.0 MP; however, the bag limits remained unchanged. These regulatory actions were implemented on June 2, 1997.

The 1997 regulatory amendment, submitted in June 1997, recommended that TAC be increased to 10.6 MP for Gulf group king mackerel. The zero-fish bag limit for captain and crew of charter and head boats was rescinded. The commercial hook and line trip limit for the Florida east coast was changed to 50 fish until the sub-quota was taken. The TAC and bag limits remained unchanged for Gulf group Spanish mackerel. These regulatory actions were implemented on February 19, 1998.

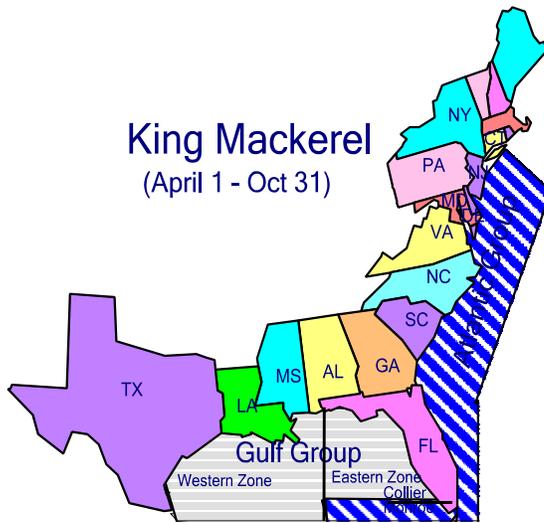
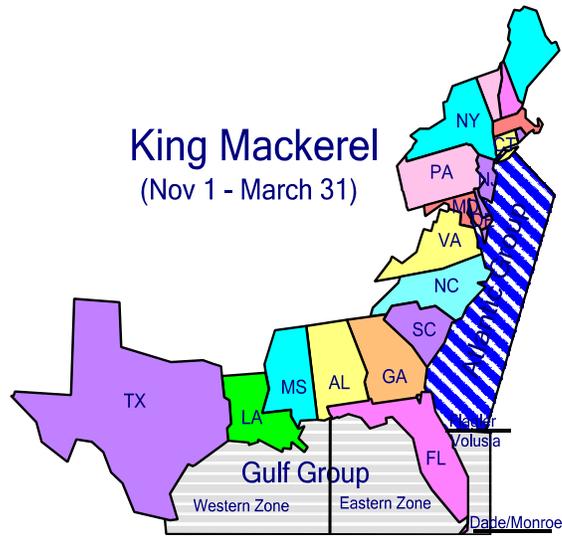
For the 1998-99 season, the regulatory amendment, submitted in July 1998 and implemented in August 1999, proposes to retain the TAC for the Gulf group king mackerel at 10.6 MP, but set the bag limit for captain and crew of charter and head boats at zero. The minimum size limit for king mackerel would increase to 24 inches FL. The commercial king mackerel hook-and-line trip limit for the Western Zone (Alabama-Texas) would be set at 3,000 pounds.

The regulatory amendment for the 1999-2000 season implemented in June 2000 retained TAC for Gulf group king mackerel at 10.6 MP. It also established a 2-fish per person per day bag limit on Gulf group king mackerel for the captain and crew of for-hire vessels and

retained this 2-fish bag limit for all other recreational fishermen; however, the captain and crew bag limit was rejected by NMFS. The fishing season for the commercial gill net fishery for Gulf group king mackerel was changed to open at 6 a.m. eastern standard time (EST) on the Tuesday following weekend open as long as the quota has not been taken and all subsequent weekends and holidays would be closed as long as the season remains open. Weekend and holiday closures would be from 6 a.m. Saturday to 6 a.m. Monday EST (or Tuesday if a Monday holiday is involved), and during this period boats with a net onboard must be tied to the dock. The TAC for Gulf group Spanish mackerel was changed from 7.0 MP to 9.1 MP, and the bag limit for Gulf group Spanish mackerel was increased from 10 to 15 fish per person per day. The amendment was implemented in June 2000.

The present management regime for king mackerel recognizes two migratory groups, the Gulf migratory group and the Atlantic migratory group. These groups are hypothesized to mix on the east coast of Florida. For management and assessment purposes, a boundary between groups was specified as the Volusia-Flagler County border on the Florida east coast in the winter (November 1-March 31) and the Monroe-Collier County border on the Florida southwest coast in the summer (April 1-October 31). For allocation purposes, the Gulf migratory group is also divided into the Eastern and Western Zones at the Florida-Alabama border (Figure 2).

**Figure 2.**  
Seasonal boundaries and divisions of the Gulf and Atlantic migratory groups of king mackerel.



### **3.0 PURPOSE AND NEED FOR ACTION**

Over the past 20 years the number of charter vessels, as estimated by scientists who surveyed the industry, increased by 147 percent<sup>3</sup> (Table 1), whereas the number of charter vessels increased by only 31 percent over the past decade. The number of individual angler charter vessel trips increased by about 51 percent, (through 1998) over the average number of trips for the previous decade (Figure 1 from Holland's presentation of the SEP Report 1999).

Tables 5 through 10 examine the change in the percentage of the total recreational landings (in numbers of fish) of highly targeted species over the past two decades that were taken by the recreational for-hire sector. As indicated in the following discussion, the recreational for-hire sector's share of the total landings doubled or tripled over the 20-year period for four of the major species, red snapper, king mackerel, gag and red grouper. The share of the recreational for-hire sector of vermilion snapper and greater amberjack changed very little over that period, but remained high.

In the January 2001 Report to Congress on the Status of U.S. Fisheries, red snapper and red grouper were classified as being overfished and subject to overfishing. Gag was classified as subject to overfishing and approaching an overfished state. King mackerel was classified as overfished. Vermilion snapper was classified as subject to overfishing. The Council was notified, by letter in January, 2001 that greater amberjack was overfished.

Although the percent of total recreational landings of red snapper by number landed by charter vessels and headboats changed very little between the 1988/1989 and 1996/1997 periods (61.7 to 70.7 percent) the percent nearly doubled over the level for the 1981/1982 period (i.e., 34.3 percent Table 5). For king mackerel, the percent of total recreational landings by number landed by charter vessels and headboats changed from 17.4 percent for 1983, to 31.8 percent for 1988, and to 61.5 percent for 1997, almost doubling between each period (Table 6). The landings for gag changed from 14.5 percent for 1981/1982 to 32.7 percent for 1995/1996, i.e., essentially doubling between first and last periods (Table 7).

The recreational for-hire vessels historically landed most of the recreational landings of vermilion snapper and greater amberjack e.g., 90.1 and 63.2 percent, respectively, in the most recent period (1995/1996) (Tables 8 and 9).

Red snapper and king mackerel have been classified as overfished and have been subjected to restrictive recreational allocations which have been frequently exceeded by recreational landings. Congress, in 1996, made the red snapper recreational allocation a quota and provided that fishing be closed when the quota is projected to be reached. This fishery was closed on November 27 in 1997 and on August 29 in 1999. This progressively longer closure period is adversely impacting the charter vessel/headboat sector that is dependent on this stock.

Gag and vermilion snapper were classified as approaching an overfished state. Remedial action was taken for the gag stock, and the last stock assessment for vermilion snapper

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<sup>3</sup>This presumes that the 1981 annual canvas of charter and head boats by Schmied (1981) is correct.

indicated that the stock size had declined as a function of natural fluctuation in recruitment. However, under the new criteria for assessing whether stocks are overfished or subject to overfishing are implemented through the Sustainable Fisheries Act (SFA) Amendment both stocks are still classified as approaching an overfished state, (i.e., subject to a fishing mortality rate resulting in overfishing).

When the new overfishing criteria became effective (June 2000), based on the stock assessment (Schirripa, et al. 1999) red grouper were classified as overfished. Red grouper, along with gag, are major components of the recreational grouper catch. Table 10 shows charter vessel/headboat landing as a percentage of the total recreational landing of red grouper doubled to about 30 percent between the 1988/1989 and 1996/1997 periods.

These data indicate that over the past two decades the charter vessel/headboat sector has increased in terms of number of vessels, in terms of number of vessel trips, and percent of the recreational catch taken. This information supports the need to arrest the continuing expansion of this fleet by limiting permits while the Council considers whether to implement a more comprehensive limited access system.

The intent of the Council was to cap the number of vessels permitted at the current level, while it assesses the actions necessary to restore these stocks and evaluates the effects of the moratorium and the need for further action.

NMFS promulgated the charter moratorium regulations (67 FR 43558, June 28, 2002) to implement Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Council. Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations.

In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendments and the final rule, and to fully comply with Magnuson-Stevens Fishery Act requirements, NMFS prepared this corrected amendment to address this error and, as such, to reflect the actions approved by the Council. Specifically, this corrected amendment will eliminate one eligibility criteria in the final rule which states that the charter vessel headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: (1) An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). This corrected amendment would also reopen the application process for obtaining Gulf charter vessel/headboat moratorium permits and extend the applicable deadlines; extend the expiration dates of valid or renewable open access permits for these fisheries; and extend the expiration date of the moratorium to account for the delay in implementation.

#### **4.0 PROBLEMS REQUIRING A PLAN AMENDMENT**

As pointed out in Section 3.0 the major species targeted by the recreational sector in offshore waters are classified as either (1) overfished and subject to overfishing (F too high), or (2) subject to overfishing, or (3) approaching an overfished state. Tables 5 through 10 indicated that the recreational for-hire sector is harvesting a large portion of these stocks annually and that portion has substantially increased over the past two decades. During the past decade the number of charter and headboats estimated by the regional surveys (Holland 1998) increased by 31 percent Gulf-wide and the number of angler trips by about 51 percent (Figure 1). Concurrently, the number of recreational for-hire vessels licensed by the states has increased significantly, and currently there are 3,220 such vessels (GSMFC 1999). For Florida, the number increased by about 44 percent between 1989-1990 and 1999-2000; however, this increase was entirely for vessels licensed to carry 4 or less passengers (Roy Williams, Pers. Comm. 4/19/01). (Table 2)

The extent to which such 4-pack or guide vessels fish in offshore waters for stocks managed by the Council is unknown. However, these boats are part of the universe being sampled by the GSMFC charter boat captain's telephone survey. Therefore, over the period of the moratorium this effort and landings can probably be determined.

Because of these problems the Council felt it would be prudent to cap the number of charter and headboats permitted to fish the EEZ for these stocks while it assessed the actions necessary to restore (or rebuild) these stocks. Such an assessment may indicate that additional action is needed to limit effort and/or latent capacity in this fleet.

The charter vessel industry considered that non-transferability of the charter vessel permit was a problem. The concern they expressed was that if the Council went forward with a more complex limited access system it would most likely use continued participation of the permit holders in the fishery as a criteria for eligibility to participate under the limited access system. Their concern was that this record of continued participation would be lost in a system without transferability of permits. Although NMFS indicated their records would allow establishing this record even if it involved many different permits being issued to the permit holder of record. However, the longer the period without transferability, the more convoluted the record becomes, and the time required for NMFS to trace that record becomes progressively longer. For example, to compute the number of vessels from Gulf ports with permits effective on November 18, 1998, required more than a day (R. Crabtree, Pers. Comm. 4/17/01).

#### **5.0 PROPOSED ACTIONS**

MORATORIUM ON CHARTER VESSEL/HEADBOAT PERMITS (Section 6.0)

##### **A. Duration of the Moratorium**

Proposed Alternative: Establish a 3-year Moratorium on the issuance of charter/headboat (for-hire) vessel permits, unless sooner replaced by a comprehensive limited access system. Effective the date that this Amendment is implemented.

## **B. Gulf Permits and Endorsements**

Proposed Alternative: Create a new charter/headboat (for-hire) vessel permit for the Gulf EEZ with endorsements for reef fish, coastal migratory pelagic and dolphin/wahoo (if FMP is implemented). A vessel decal for the permitted vessel will be required. All permits and/or endorsements will be permanently numbered (this is so the permits/endorsements can be tracked through history).

## **C. Initial Eligibility Requirements for Permits and/or Endorsements**

Proposed Alternative: Provide a fully transferrable permit and endorsements to the following:

1. Individual/charter vessels who held valid permits on March 29, 2001, or who held a valid permit during the preceding year, or had applied for such permits received in the NMFS office by March 29, 2001 (03/29/01).
2. Any person who can demonstrate to NMFS they had a charter/ headboat(for-hire) vessel under construction prior to 03/29/01 with copy of contract and/or receipts for expenditures of at least \$5,000.00.
3. Provide for Historical Captain Permits as follows:  
Any U.S. Coast Guard licensed captain, who can demonstrate to NMFS, they were licensed by the USCG and operated, (as a Captain), a for-hire fishery permitted vessel prior to 03/29/01, but did not have a fishery permit issued in their name, and who must qualify for the permit within 90 days of implementation of the final rule for this amendment and who must demonstrate at least 25% of their earned income came from recreational for hire fishing in 1 of the last 4 years ending with 3/29/01. They will be issued a letter of eligibility to be replaced by permit/endorsements to be used only on a vessel that they operate as a captain.

## **D. Permit and Endorsement Transfers During the Moratorium**

Proposed Alternative: All permits/endorsements will be fully transferable with or without the vessel but without any increase in the passenger capacity, as established by the U.S. Coast Guard safety certificate.

## **E. Vessel Passenger Restriction on Permit Transfers**

Proposed Alternative: All permits/endorsements will be fully transferable with or without the vessel but without any increase in the passenger capacity, as established by the U.S. Coast Guard safety certificate.

## **F. Annual Re-issuance of Permits Not Renewed (or Permanently Revoked)**

Proposed Alternative: Permits not renewed within one year of their expiration (or permanently revoked) will not be reissued by NMFS during the moratorium.

### **G. Appeals Process Under Moratorium**

Proposed Alternative: Individuals or Corporations can appeal to the RA to resolve issues related to the NMFS permit office records that pertain to initial eligibility.

### **CHARTER VESSEL REPORTING AND PERMIT RENEWAL CONDITIONS (Section 7.0)**

Proposed Alternative (1): Renewal will be every two years provided vessel complies with (2) below.

Proposed Alternative (2): All vessels holding permits and/or endorsements will be included in an active sampling frame and participate in one of the approved fishing data surveys. Surveys include, but are not limited to:

- A: Charter boat Telephone Survey
- B: Beaufort Headboat Survey
- C: Texas Parks & Wildlife Survey
- D: Subsequently approved appropriate data collection system.

## **6.0 MORATORIUM ON CHARTER VESSEL/HEADBOAT PERMITS**

The Council is considering implementation of a temporary moratorium on the issuance of additional charter vessel/headboat permits to moderate short-term future increases in fishing capacity while the Council determines what is necessary to stabilize fishing mortality for stocks subject to overfishing or that are overfished. A moratorium, if adopted, should provide a basis for the development of a more comprehensive effort limitation program for this segment of the recreational fishery. It is a prudent first step while the Council evaluates the need for a more comprehensive effort limitation programs that could provide better long-term control of fishing capacity and effort.

A moratorium is a form of limited access management that is, in this case, intended to temporarily stabilize the number of fishing vessels while the Council considers if a more comprehensive effort limitation program is necessary. In principle, its direct effect is to limit the number of vessels in the fishery to a number equal to those permitted before or at the start of the moratorium. Whereas, under open access, the number of vessels entering the fishery will continue to increase. This could diminish the overall economic performance of the fishery and may adversely affect the actions for restoration of overfished stocks. If, upon consideration of alternative effort limitation programs, the Council decides the recreational for-hire reef fish or coastal migratory pelagics fishery is best managed as an open-access fishery, then the moratorium would end.

The proposed permit moratorium is essentially a limited entry system by license limitation which in itself will not fully control fishing effort because the existing fishing fleet may react by increasing overall fishing effort. But a moratorium would better stabilize fishing effort than no moratorium.

In the course of public hearings (2 sets of 10 hearings) and from public letters and testimony, it became very clear that a large segment of the recreational for-hire fishery consisted of part-time fishermen, and, therefore, there is a lot of latent capacity in the number of vessels that will be eligible to participate under the moratorium. However, from this same public comment it appears unlikely that these persons, who range from week-end warriors to school teachers who fish in their off-season, are unlikely to change to fishing more frequently during the 3-year moratorium. Therefore, it seems unlikely that this latent capacity would be used to expand effort in the fishery during that period, and the moratorium should, to a large extent, stabilize such effort.

A large part of the considerations of whether a more comprehensive system is needed will be the determination of the actions needed to restore the overfished stocks (See Section 3.0 and 4.0).

Within the duration of the moratorium the Council will have time to evaluate alternatives for more comprehensive effort limitation programs that would replace the temporary moratorium and provide a basis for long-term management. As the initial step in this direction, the Council is publishing in the Federal Register a **control date** of March 29, 2001, for the reef fish and coastal migratory pelagics charter and head boat fishery. The intent of this notice is to inform the public that entrants into the charter vessel/headboat fisheries after March 29, 2001, may not be assured of future access to the reef fish and/or coastal migratory pelagics resources if: (1) an effort limitation management regime is developed and implemented that limits the number of vessels or participants in the fishery; and, (2) if the **control date** notice is used as a criterion for eligibility.

From a management standpoint some of the problems related to records used in the development of a full-fledged limited access management program would be resolved by a moratorium including: 1) development of a data base depicting the number of permits valid as of or applied for on or before the March 29, 2001, control date; 2) development of a data base depicting the number of permits issued after the control date, that would be re-validated based upon moratorium criteria. This would include those permits issued to vessels prior to the control date but the vessels were sold (permit not transferrable with vessel under existing regulations), destroyed, sunk, or lost at sea, and a new permit was issued for a replacement vessel. Tracking the transfer of these vessels would be accomplished under the new moratorium permitting system possibly by the use of unique identifier numbers assigned to vessel owners. This data base would also identify new participants that entered the fishery subsequent to the control date that would not be eligible for permits under the moratorium; 3) development of a data base depicting those persons qualifying under the historical captains provisions of the moratorium; and 4) development of a data base depicting those persons qualifying under the vessel under construction provisions of the moratorium.

The moratorium may be considered as a prelude to a more comprehensive controlled access management system in the for-hire fisheries. It serves as the first approach to limiting the number of participants and places the fishery in a relatively stable condition for the purpose of designing controlled access management.

The moratorium proposed in this amendment considers 8 features: (1) the duration of the moratorium (Section A); (2) New Gulf Permit/Endorsement (Section B); (3) initial eligibility requirements for permits/endorsements (Section C); (4) permit/endorsement transfers during the moratorium (Section D); (5) vessel passenger restrictions for permit/endorsement transfer (Section E); (6) annual re-issuance of permits not renewed (Section F); (7) an appeal process (Section G), and (8) Reporting and Permit Renewal Requirements (Sections 7.0).

The Council could develop an amendment, at a subsequent time, for a more comprehensive limited access system without establishing the moratorium. However, the records of participation would be much more complex than would be the case if the moratorium was initiated first (see discussion of records under Section 6.0 C). It should also be recognized that historically there has been a high turnover rate in the charter fishing industry. Ditton and Loomis (1985) found that over a 5-year period (1975-1980) only 48 percent of the charter firms in the Texas industry were still in business. Ditton and Vize (1987) monitored the trend over an additional 5-year period (1980-1985) at the end of which only 25 percent of the participants from 1975 were still in business. More recent data from Sutton et al. (1999) and from Holland et al. (1999) show much longer trends of operation (See tables and discussion in Section 6.0 A).

It should also be recognized that the Council can only limit participation by instituting a moratorium or limited access system on the vessels and boats that are permitted to fish in the EEZ. The states may continue to license vessels and boats that can fish state waters for the same stocks. In fact, some state agencies may lack authority to limit entry or adopt compatible rules. As pointed out in the Introduction, there are about **3,220** recreational for-hire vessels in the Gulf states including guide boats that presumably fish entirely or primarily in state waters, versus about **1,650** vessels with Federal permits (Tables 11, 11a and 11b).

Finally, it should be recognized that there are alternatives for transfer of permits (under Section D) that would allow the permit holder to sell the permit during the moratorium, gaining a temporary windfall profit.

## **6.1 Comparison of Programs to the Magnuson-Stevens Act Provisions for Limited Access**

Section 303(b)(6) provides that to establish a limited access system for the fishery in order to achieve OY if, in developing such a 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 the 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, and
- F. Any other relevant considerations.

Because the moratorium allows transfer of permits by selling them to other persons it is essentially a temporary license limitation system. The moratorium will help the Council to achieve OY, for those stocks that are or will be classified as overfished and those subject to overfishing, by stabilizing the number of recreational for-hire vessels participating in the fisheries while the Council determines the actions necessary for recovery or rebuilding those stocks and whether a more comprehensive limited access system is needed.

The moratorium program certainly considered the present participation in the fisheries to the fullest extent. It became very obvious in the development of the moratorium, and from public comment that there were many vessels operating in these Gulf fisheries that had not obtained permits. This apparently was because they were unaware of the permit requirements. As the Council continued to work on development of the amendment more and more persons became aware of the permit requirement and obtained permits. The number of vessels operating out of the Gulf (or Monroe County, Florida) ports with permits for the reef fish or coastal migratory pelagic fisheries was 940 on November 18, 1998 (old control date) and 1,650 vessels by August 2000 (Tables 11, 11a, and 11b) or an increase of 75 percent.

To be sure that the current participants had an opportunity to be included, the Council selected 3/29/01 as the new control date for eligibility (See Section 6.0 B). This certainly takes into full consideration historical fishing practices and dependence on the fisheries.

The economics of the fisheries, and the cultural and social framework relevant to the fisheries and fishing communities was a prime consideration of the Council in initially capping the number of vessels permitted rather than taking other actions that initially would have reduced the number of vessels (such as Alternative A-3 recommended by the AP). The inclusion of all vessels currently participating in these fisheries should not have altered the economic, social, or cultural framework of the fishing communities. In determining the actions needed to restore these stocks during the moratorium the Council may conclude that these actions may require altering these frameworks. Since no vessels in the fisheries were displaced by the moratorium, the issue of the capability of these vessels to be used in other fisheries is not a factor that needs to be determined.

#### **A. Duration of the Moratorium**

**Proposed Alternative: Establish a 3-year moratorium on the issuance of charter/headboat(for-hire) vessel permits, unless sooner replaced by a comprehensive limited access system. Effective the date that this amendment is implemented.**

Discussion: The Council selected the 3-year moratorium over a 5-year moratorium because it concluded that the selection of March 29, 2001, as the date upon which eligibility was

based under Section 6.0 C essentially resulted in the moratorium beginning at that time. That is because charter vessel/headboat permits issued after that date would be rescinded when the final rule for the amendment is effective. The Council concluded it would likely require about a year for the amendment to be implemented after Council staff submits it to NMFS for implementation, i.e., the period before it expires would be about 4 years.

**Alternatives Considered and Not Selected:**

**Alternative A-1: Establish a 5-year moratorium on the issuance of charter vessel permits, unless sooner replaced by a comprehensive limited access system effective -**

- a. January 1, 2002, or
- b. Date this amendment is implemented.

**Alternative A-2: Status Quo - No moratorium.**

**Alternative A-3: In lieu of a moratorium, require to renew a charter vessel/headboat permit that the owner must demonstrate at least 50 percent of his earned income was from recreational for-hire fishing in 1 of 2 previous calendar years.**

**Alternative A-4: In lieu of a moratorium, create a charter vessel quota for the red snapper fishery, and subsequently quotas for other fisheries, if necessary.**

**A-4 Sub-options for Charter Vessel Quota (See Table 12)**

OPTION	LANDING PERIOD	CHARTER % OF LANDING	CURRENT RECREATIONAL QUOTA	CHARTER QUOTA
1	1981 - 1987	46.6%	4.47 MP	2.09 MP
2	1981 - 1990	49.3%	4.47 MP	2.20 MP
3	1981 - 1998	58.4%	4.47 MP	2.61 MP
4	1991 - 1998	67.4%	4.47 MP	3.01 MP
5	1986 - 1988	73.1%	4.47 MP	3.27 MP

MP=Millions of Pounds

**Alternative A-5: Establish both a 3 or 5-year moratorium on the issuance of charter vessel permits and a charter vessel quota based on one of the five options under Alternative A-4.**

**Alternative A-6: The moratorium will expire 3 years after implementation or expire automatically should the red snapper season be shorter, bag limits decreased, or size limits increased (See Appendix B, Section A).**

Discussion: In addition to alternatives for the duration of the moratorium, this section also provides alternatives (Status Quo, A-3 and A-4) for not implementing the moratorium.

Alternative A-1 provides for termination after 5 years, unless sooner replaced by a limited access system. The 5-year period would provide more a stable horizon over which the industry could plan their operations. It should also be recognized that the duration of the moratorium could be extended by subsequent amendment. A 5-year moratorium period with an effective date of 1/1/02 was the recommendation by Mr. Fensom (Appendix A).

Alternative A-3 was suggested by an AP member as a simple way to reduce charter vessel/headboat effort while maintaining open access in the charter fishery. It was the recommendation of the Ad Hoc AP to the Council. The effect of the measure would be the elimination of most of the part-time charter vessel fishermen. A similar income requirement applied in Reef Fish Amendment 1 to the commercial reef fish fishery probably eliminated several thousand part-time commercial fishermen. The full-time segment of the charter industry could benefit by there being more clients for their services, i.e., possibly more days of operation. Based on discussions in the AP and public comment a fairly large portion of the charter operations are part-time fishermen, who would be adversely affected especially in South Texas.

Alternative A-4 would create a separate red snapper quota for the charter (and recreational for-hire) sector instead of a permit moratorium. The allocation ratios in sub-options 1 through 5 are based on the ratio (or percentage) of charter vessel landings to total recreational landings for five periods (See Table 12). The periods are: (1) 1981 - 1987 (essentially the same period used for recreational/commercial allocations); (2) 1981 - 1990 (the period before rules modified landings); (3) 1981 - 1998 (the longest period for which landings data are available); (4) 1991 - 1998 (the period over which regulations affected the landings of recreational and recreational for-hire fishermen); and (5) 1986 - 1988 (the period before regulations when the MRFSS provided better estimates of landings). In regard to option (5) the years 1986 - 1988 had the lowest standard errors for the private/rental mode (e.g. 17 to 18 percent), whereas 1989 had the highest standard error (32.3 percent). The Texas boat mode was not sampled from 1982 - 1984. Some of the MRFSS data for Texas was not updated when other data was updated in 1994. The headboat survey did not begin until 1986. The majority of red snapper landings for Texas comes from the headboats. Under these sub-options the charter sector share of the recreational quota would be (1) 46.6 percent; (2) 49.3 percent; or, (3) 58.4 percent; (4) 67.4 percent; or, (5) 73.1 percent. Because the Magnuson-Stevens Act requires the recreational fishery for red snapper be closed when its allocation (or quota) is taken, under Alternative A-4, the charter vessel fishery would end when the quota is taken (or projected to be taken). Because monitoring the harvest to determine when the quota is taken is very difficult, that data is projected using a model and 5-year moving average.

Alternative A-5 would provide for a 3 to 5-year moratorium and a separate recreational red snapper quota for recreational for-hire vessels. The Ad Hoc Charter Vessel/Headboat AP opposed Alternatives A-4 and A-5, almost unanimously.

Alternative A-6 has a suggested provision that would terminate the moratorium if the recreational red snapper season was shortened or the bag limit reduced or size limit increased. This alternative was submitted by persons who felt NMFS support for a moratorium was entirely related to its value in maintaining a fixed red snapper season over the moratorium period. NMFS and NOAA GCSE indicated the measure would be difficult to defend and termination of the moratorium would require a rather lengthy administrative process (See Federal comments on amendment). If A-6 had been selected as the proposed alternative most likely NMFS would have disapproved that portion of the provision.

Biological Impacts: Considering past trends in the fisheries, the stabilization of fishing capacity, in terms of number of vessels by the moratorium will have a beneficial impact. The degree to which actual restrictions in effort would occur from the moratorium would determine the level of the biological benefit and depend largely on how lenient or restrictive the alternative selected under Section 6.0 C for initial eligibility are.

Alternative A-3 for a 50 percent earned income requirement in lieu of a moratorium would have significantly reduced effort by making most of the part-time fishermen ineligible. Judging from public comment a large portion of the vessels are operated on a part-time basis. Alternative A-2 (Status Quo) and A-4 would likely have an adverse biological impact. Alternative A-1 is anticipated to have an adverse biological impact on the fisheries resource because it has effective dates for the moratorium in the future. This would allow speculative entry into the fishery by persons who think the permits will become valuable. That would create excess latent fishing capacity that if used could adversely affect the stock.

Alternative A-4 creates a quota for charter vessels targeting red snapper and other fisheries as necessary. The alternative does not create a moratorium on the issuance of charter vessel/headboat permits. The overfished status of several of the major stocks targeted by and the continuing expansion of the recreational for-hire sector are problems that support the development and implementation of a permit moratorium. Further, the creation of a red snapper quota, by itself, does not decrease fishing mortality rates on the red snapper fishery which is currently classified as overfished and undergoing overfishing. The number of recreational red snapper landed by the for-hire sector increased from 34 percent (1981-1982) to 62 percent (1988-1989) to 71 percent (1996-1997) of the total landings. These increased catch rates by the recreational for-hire sector have contributed to the progressively earlier closures of the red snapper recreational fishery each year. This fishery was closed on November 27 in 1997, September 30 in 1998, and August 29 in 1999. This progressively longer closure period is adversely impacting the charter vessel/headboat sector that is dependent on this stock. Establishment of a red snapper quota for the recreational for-hire sector would accelerate fishing effort and fishing mortality rates and result in higher discard mortality rates as fishermen "race to fish" before the quota is reached. Additionally, once the recreational red snapper quota is reached, effort shifting to other stressed stocks targeted by the recreational for-hire fisheries would occur.

Alternative A-5 would provide for a 3 to 5-year moratorium on the issuance of charter vessel permits and create a separate red snapper quota for recreational for-hire vessels. The moratorium on the issuance of charter vessel permits, by itself, would cap future

participation in the recreational for-hire fisheries and thereby moderate short-term increases in fishing effort and fishing mortality rates. This action, which is basically the Proposed Alternative, would benefit many of the stocks targeted by the recreational for-hire sector that are stressed or in need of rebuilding (i.e., red grouper, greater amberjack). However the creation of a separate red snapper quota for the recreational for-hire sector would accelerate fishing effort and fishing mortality rates and result in higher discard mortality rates as fishermen "race to fish" before the quota is reached. Additionally, once the recreational red snapper quota is reached, effort shifting to other stressed stocks targeted by the recreational for-hire fisheries would occur.

Alternative A-6 provides for a moratorium on the issuance of charter vessel permits, and, by itself, would cap future participation in the recreational for-hire fisheries and thereby moderate short-term increases in fishing effort and fishing mortality rates. This action, which is basically the Proposed Alternative, would benefit many of the stocks targeted by the recreational for-hire sector that are in need of rebuilding (i.e., red grouper, greater amberjack). However, the provision that would terminate the moratorium if the recreational red snapper season was shortened, bag limits decreased, or size limits increased would negate any biological benefits of the moratorium. Effort shifting by the recreational for-hire sector would occur resulting in increased fishing effort and fishing mortality rates on other stressed stocks targeted by the fishery.

Economic Impacts: Over its life span, any of the moratorium alternatives would restrict the maximum number of vessels operating in the fishery to that allowed at the start of the moratorium. This maximum number of vessels would depend on the eligibility requirements for securing a for-hire vessel permit. Discussions along this line are found in Section C of this document.

As with other permit moratoria now in place in the Gulf, the number of permitted vessels may be expected to dwindle over the years. The actual number of permitted vessel reduction would depend on the provisions for permit transfer, the treatment of expired permits, the turnover rate in the for-hire fishery, and the market for permits.

Permit transfer, expired permits, and market for permits are treated in later sections of this document. It may only be mentioned at this stage that the more restrictive the provisions governing permit transfer and expired permits and the less likely of an emergence of the market for permits, the greater would be the reduction in permitted for-hire vessels during the moratorium.

Regarding the turnover rate in the for-hire fishery, Ditton and Loomis (1985) and Ditton and Vize (1987) found a relatively high turnover rate in the charter fishery in Texas, reaching 52 percent over 5 years and 75 percent over 10 years. More recent studies, however, appear to portray a more stable for-hire fishery, at least with respect to operators of for-hire vessel operations. Sutton et al. (1999) found that, in Alabama through Texas, 81 percent of charter vessel operators and 71 percent of party boat operators are first generation operators. The average charter vessel operator has been in business for 15 years and the average party boat

operator, 12 years. Holland et al. (1999) found that in Florida 78 percent of charter vessel and headboat operators are first generation operators. They also reported that the average charter vessel operator has been in business for 16 years and the average headboat operator, 22 years. Also, they found that in states from Georgia through North Carolina, 88 percent of charter vessel operators are first generation operators. The average charter vessel operator has been in business for 16 years and the average headboat operator, 21 years. While most of the for-hire operators from Texas through North Carolina are first generation operators, it appears that the average operator would remain largely unaffected by either a 3-year or 5-year moratorium as can be inferred from the number of years they have been in operation. Of course, there is always the possibility that some operators may have changed vessels over time. There are, nonetheless, operators that would be affected by the moratorium as can be gleaned from the tables below that present more details regarding the business tenure of charter vessels and headboats.

**Number and percent of charter boat operators by number of years spent operating a charter boat  
(Alabama - Texas)**

Years of Operation	Alabama		Louisiana		Mississippi		Texas		Total	
	n	%	n	%	n	%	n	%	n	%
5 or fewer	5	22.7	2	16.7	3	18.8	17	37.0	27	28.1
6-10	1	4.5	3	25.0	2	12.5	7	15.2	13	13.5
11-15	5	22.7	3	25.0	2	12.5	7	15.2	17	17.7
16-20	3	13.6	2	16.7	2	12.5	4	8.7	11	11.5
21-25	3	13.6	0	0.0	2	12.5	5	10.9	10	10.4
26-30	3	13.6	0	0.0	4	25.0	5	10.9	12	12.5
31 or more	2	9.1	2	16.7	1	6.3	1	2.2	6	6.3
Total	22	99.8	12	100.1	16	100.1	46	100.1	96	100.0
Mean	16.6		14.8		17.3		12.6		14.5	
Standard Deviation	9.5		10.8		10.4		9.7		9.9	

Source: Sutton et al. (1999).

**Number and percent of party boat operators by number of years spent operating a party boat  
(Alabama - Texas)**

Years of operation	n	%
5 or fewer	8	38.1
6-10	6	28.6
11-15	1	4.8
16-20	1	4.8
21-25	4	19.0
26 or more	1	4.8
Total	21	100.1
Mean	11.88	
Standard Deviation	12.28	

Source: Sutton et al. (1999).

**Number and percent of party boat operators by number of years spent operating a charter boat (Florida)**

Years of Operation	Atlantic		Gulf		Keys		Florida Total	
	n	%	n	%	n	%	n	%
0-1	1	1.2	5	3.3	4	6.5	10	3.3
2-5	13	15.4	25	16.2	6	9.7	44	14.7
6-10	12	14.3	25	16.2	16	25.8	53	17.7
11-15	15	17.9	33	21.4	10	16.1	58	19.3
16-20	15	17.9	22	14.3	11	17.7	48	16.0
21-25	7	8.3	24	15.6	5	8.1	36	12.0
26-30	14	16.7	5	3.3	5	8.1	24	8.0
> 30	7	8.3	15	9.7	5	8.1	27	9.0
Total	84	100.0	154	100.0	62	100.0	300	100.0
Mean	17.74		16.05		15.53		16.42	
Standard Deviation	11.30		11.94		10.56		11.48	

Source: Holland et al. (1999).

**Number and percent of headboat operators by number of years spent operating a headboat**

Years of Operation	Florida	
	n	%
0-1	0	0
2-5	4	11.1
6-10	1	2.8
11-15	5	13.9
16-20	5	13.9
21-25	10	27.8
26-30	6	16.7
> 30	5	13.9
Total	100	100
Mean	21.97	
Standard Deviation	10.4	

Source: Holland et al. (1999).

**Number and percent of charter boat operators by number of years operating a charter boat  
(North Carolina - Georgia)**

Years of Operation	North Carolina		South Carolina		Georgia		Total	
	n	%	n	%	n	%	n	%
5 or fewer	8	20.0	10	35.7	2	6.7	20	20.4
6-10	3	7.5	6	21.4	4	13.3	13	13.3
11-15	6	15.0	8	28.6	14	6.7	28	28.6
16-20	7	17.5	4	14.3	6	13.3	17	17.3
21-25	10	25.0	0	0.0	1	46.7	11	11.2
26-30	0	0.0	0	0.0	2	20.0	2	2.0
31 or more	6	15.0	0	0.0	1	3.3	7	7.1
Total	40	100.0	28	100.0	30	100.0	98	100.0
Mean	19.6		9.6		14.7		15.5	
Standard Deviation	10.5		7.3		7.3		9.8	

Source: Holland et al. (1999).

The tables above show the wide variation in business experience among operators across the Gulf and South Atlantic. Although these tables do not necessarily depict the turnover rate scenario in the for-hire fishery, some inferences may be made. Given ordinary business conditions, some operators across the entire distribution may cease business, but the likelihood of business cessation may be higher among the newer operators. In the western Gulf (Alabama through Texas) as many as 28 percent of charter vessel operators and 38 percent of headboat operators show 5 years or less of business experience. In Florida, about 20 percent of charter vessel operators and 11 percent of headboat operators have 5 years or less of business experience while in the area from Georgia through North Carolina about 20 percent of charter vessel operators have 5 years or less of business experience. These numbers represent the number of vessels that may be affected by the 5-year moratorium.

A 3-year moratorium may be expected to affect fewer number of vessels than a 5-year moratorium. In fact, Sutton et al. (1999) noted that 87 percent of charter vessel operators and 86 percent of party boat operators in Alabama through Texas thought they would still be in business in 3 years. About 93 percent of Florida charter vessel and headboat operators thought they would still be in business in 3 years, and about 81 percent of charter vessel operators and 100 percent of headboat operators in Georgia through North Carolina expected to remain in business in 3 three years (Holland et al. 1999). These numbers appear to indicate that fewer vessels may be expected to exit the fishery under a 3-year moratorium than a 5-year moratorium. Nevertheless, it is worth noting at this stage that the SEP (2001) considered the 5-year moratorium as a better alternative since it would give current participants in the for-hire fishery a longer time horizon on which to base business decisions. In addition, the 5-year time period would allow sufficient time for development and implementation of other or more permanent controls on the fishery.

To the extent that a moratorium would immediately or eventually exclude vessels from the for-hire fishery, it would address some of the problems in the fishery that are associated with the competitive status of those remaining in the fishery. Sutton et al. (1999) listed the following factors rated by charter vessel operators (Alabama through Texas) as important problems facing the industry: weather/natural events, high cost of overhead, fishing regulations, cost of insurance, profitability, fuel costs, too many operators, and competition with other operators. The corresponding list for party boat operators (Alabama through Texas) is: fishing regulations, cost of insurance, weather/natural events, high cost of overhead, crew personnel problems, competition with other operators, and profitability. Holland et al. (1999) also listed the major problems faced by for-hire operators in Florida, Georgia, South Carolina, and North Carolina. Florida charter vessel and headboat operators rated the following as substantial problems: high cost of overhead, cost of insurance, profitability, weather/natural events, fuel costs, and fishing regulations. In Georgia through North Carolina charter vessel operators rated as the most serious problem the cost of running the business, such as high overhead, fuel and insurance costs while headboat operators rated profitability and the cost of running the business as the most serious problems. Any of the moratorium alternatives would have some bearing on the problems related to the presence of too many operators, competition with other operators, and profitability. If a moratorium contains features that would likely reduce the number of for-hire vessel participating in the

fishery, those mentioned problems would be partly alleviated. With vessel reducing features, a 5-year moratorium offers a better chance of addressing the mentioned problems, but it should be noted that alleviating the problems faced by those remaining in the fishery would be partly borne by those immediately or eventually excluded from the fishery.

Another cost that may arise from the moratorium is the possible loss to recreational anglers if they have to cancel trips due to lack of for-hire vessels supplying the anglers' demand for recreational trips. But it is likely that this loss would be small relative to losses that might arise from more restrictive regulations on the reef fish and mackerel fisheries.

A moratorium may be considered as a prelude to a more comprehensive controlled access management in the for-hire fishery. It serves as a first approach to limiting the number of participants and places the fishery in a relatively stable condition for the purpose of designing controlled access management. But it should be noted that the stability referred to here is with respect to number of participating vessels. It is possible that effort may still increase if vessels take more trips or carry more passengers. In general, if a moratorium does not eventually transform into some kind of controlled access management for the subject fishery, it may be adjudged less beneficial than the status quo, since the fishery would simply revert to its previous status with losses being incurred by those excluded from the fishery during the moratorium and anglers forgoing trips or paying higher fees due to a limited number of vessels. The for-hire fishery, however, deviates from this general norm applicable to a moratorium. It partakes of the nature of both the commercial sector in the sense that a for-hire operation is a business concern and the recreational sector in the sense that it is a supplier of angler trips. So long as the non-transformation of a moratorium into some type of controlled access is based on an evaluation of the inapplicability of controlled access management for the fishery, the moratorium would have essentially served its purpose in stabilizing participation in the fishery while such an evaluation is being conducted. In this sense, the moratorium, regardless of the eventual management strategy, may be adjudged more beneficial than the status quo.

Alternative A-3 differs in some respects from the moratorium alternatives. The main effect of this alternative is to limit the part-timers out of the for-hire fishery. Over the short-run, this alternative offers the possibility of reducing the number of participants in the fishery more than any of the moratorium alternatives. But this short-run reduction is apt to be negated through later entries by those serving as crew members of for-hire vessels or those participating in the for-hire business in other fisheries in Federal or state waters. The SEP (2001) noted that if the Council wishes to significantly reduce effort, additional measures to the moratorium, such as earned income requirement will be required.

The number of participants, especially part-timers, that may be adversely affected by Alternative A-3 cannot be estimated, since the current permitting system on for-hire vessels does not require submission of information regarding the owner's or operator's income. Information from the two mentioned surveys on the for-hire fishery appear to indicate that the adverse impacts could be substantial. The tables below show the percentage of household income derived from the for-hire businesses.

**Number and percent of charter boat operators by percentage of household income derived from the charter business**

(Alabama - Texas)

Percent of Income from Charter Business	Alabama		Louisiana		Mississippi		Texas		Total	
	n	%	n	%	n	%	n	%	n	%
25 or less	4	19.0	4	36.4	7	46.7	11	23.9	26	28.0
26-50	6	28.6	3	27.3	2	13.3	15	32.6	26	28.0
51-75	3	14.3	1	9.1	4	26.7	9	19.6	17	18.3
76-100	8	38.1	3	27.3	2	13.3	11	23.9	24	25.8
Total	21	100.0	11	100.1	15	100.0	46	100.0	93	100.1
Mean	56.5		46.1		40.0		50.2		49.5	
Standard Deviation	36.6		39.2		31.2		31.4		33.4	

Source: Sutton et al. (1999).

**Number and percent of party boat operators by percentage of household income derived from the charter business**

(Alabama - Texas)

Percent of Income from Party Boat Business	n	%
25 or less	2	11.1
26-50	2	11.1
51-75	2	11.1
76-100	12	66.7
Total	18	100.0
Mean	78.0	
Standard Deviation	33.6	

Source: Sutton et al. (1999).

**Number and percent of charter boat operators by percentage of household income derived from charter business (Florida)**

Percent of Income from Charter Business	Atlantic		Gulf		Keys		Florida Total	
	n	%	n	%	n	%	n	%
25 or less	9	11.0	31	21.7	6	11.2	46	16.5
26-50	9	11.0	15	10.5	2	3.7	26	9.3
51-75	3	3.7	16	11.2	4	7.4	23	8.2
76-100	61	74.4	81	56.6	42	77.8	184	65.9
Total	82	100.1	143	100.0	54	100.0	279	99.9
Mean	82.64		70.71		85.11		77.01	
Standard Deviation	30.65		37.11		29.33		34.4	

Source: Holland et al. (1999).

**Number and percent of headboat operators by percentage of household income derived from the charter business**

Percent of Income from Charter Business	Florida	
	n	%
25 or less	2	5.6
26-50	1	2.8
51-75	0	0
76-100	33	91.7
Total	36	100
Mean	93.06	
Standard Deviation	23.64	

Source: Holland et al. (1999).

**Number and percent of charter boat operators by percentage of household income derived from charter business  
(North Carolina - Georgia)**

Percent of Income from Charter Business	North Carolina		South Carolina		Georgia		Total	
	n	%	n	%	n	%	n	%
9 or less	7	17.9	5	17.9	1	3.4	13	13.5
10-29	9	23.1	9	32.1	6	20.7	24	25.0
30-49	1	2.6	3	10.7	10	34.5	14	14.6
50-69	6	15.4	6	21.4	7	24.1	19	19.8
70-99	2	5.1	3	10.7	5	17.2	10	10.4
100	14	35.9	2	7.1	0	0	16	16.7
Total	39	100.0	28	100.0	29	100	96	100
Mean	61		41.7		43.9		50.7	
Standard Deviation	5.8		5.8		4.6		3.4	

Source: Holland et al. (1999).

**Number and percent of headboat operators by percentage of household income derived from the charter business**

Percent of Income from Charter Business	North Carolina-Georgia	
	n	%
25 or less	2	13.4
26-40	1	6.7
41-90	3	20.0
91-100	9	60.0
Total	15	100.1
Mean	82.5	
Standard Deviation	32.2	

Source: Holland et al. (1999).

An average charter boat operator in Alabama through Texas derives about 50 percent of his/her income<sup>4</sup> from charter operations, and thus would barely qualify for the permit under Alternative A-3. On the other hand, an average headboat operator derives about 78 percent of his/her income from headboat operations, and thus would readily qualify for the permit. An average charter boat operator in Alabama and Texas would qualify for the permit while that for Louisiana and Mississippi would not. For the Alabama-Texas area, about 56 percent of charter operators and 22 percent of headboat operators would probably not qualify for the permit.

In Florida, an average charter operator derives a relatively high percentage of household income from the for-hire business, ranging from 71 percent in the Gulf to 85 percent in the Keys. Also, an average headboat operator derives 93 percent of his/her income from headboat operations. Both the average charter and headboat operators are then likely to qualify for the permit. For the entire Florida for-hire sector, about 26 percent of charter operators and 8 percent of headboat operators may not qualify for the permit.

In the states of North Carolina, South Carolina, and Georgia, an average charter operator derives about 51 percent of income from charter operations. An average charter operator in South Carolina and Georgia derives less than 50 percent of income from charter operations, and is unlikely to qualify for the permit. For the three states, a relatively high percentage of charter operators (53 percent) may not qualify for the permit. The average headboat operator in these three states derives a relatively high percentage of income (83 percent) from headboat operations, and is likely to qualify for the permit.

A major conclusion that appears to be indicated by the information above is that a 50 percent income eligibility requirement for a for-hire permit could force out a good number of operators, particularly charter boat operators. This conclusion, however, should be interpreted in the light of several issues surrounding the given information. First, the tabulated data is based on a relatively small sample because only a limited number of operators in the survey responded to the income questions. Second, the income on which the percentage of for-hire operation income is based is household income. In principle, earned income, which is the income base stipulated in Alternative 3, is equal to or less than household income. If most operators receive non-earned income, such as interest, dividends, retirement payout, then the percentages shown in the tables above would overstate the number of operators that may not meet the 50 percent income requirement. Another issue, though not related to the nature of the data collected from the surveys, is the possibility that crew members of for-hire vessels in other fisheries in Federal or state waters enter the for-hire fishery would likely qualify for the income requirement. If they so decide to purchase and/or operate their own or somebody else's vessel, the number of vessels may actually increase over time.

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<sup>4</sup>It should be noted that some industry participants have expressed concerns on some of the results of the Sutton et al. (1999) study. Walker and Pease (2000) particularly noted some problems with the estimation of for-hire vessel income.

Alternative A-4 is different from the other alternatives in the sense that it does not directly affect the number of participants in the fishery. In addition, this alternative is specific only to the red snapper fishing activities of for-hire vessels, at least at this stage. It is worth mentioning here that the Council's Socioeconomic Panel (SEP 1999) noted that if the Council's intent is to freeze the for-hire sector's share of the total recreational quota, establishing percentage allocations for the for-hire and private recreational sectors may be more effective in achieving that objective than a moratorium on the issuance of for-hire vessel permits.

One issue identified in this amendment is the increasing participation of the for-hire fishery in terms of percent of recreational catch taken, number of individual angler vessel trips, and number of vessels. Alternative A-4 would directly address the issue pertaining to the percent of recreational catch taken with respect to red snapper. Whatever option for quota allocation is chosen, the for-hire sector would be restricted to that quota provided a mechanism can be established to effectively monitor the sector's harvest of red snapper. It is very likely that in the short-term a for-hire quota may not be effectively monitored, but over the long-term some mechanism may be developed to restrict the for-hire sector to its allocation. Also depending on the effectiveness of quota monitoring, Alternative A-4 could restrict the number of angler charter vessel trips taken, especially if a lower percentage allocation, e.g. Option 1 or 2, is chosen. Very likely, the number of for-hire vessels would remain unaffected by Alternative A-4, and in this sense this alternative would be similar to the status quo.

Alternative A-4 would have a more direct effect on the length of the for-hire fishing season for red snapper. Given the increasing number of charter angler trips harvesting red snapper, a quota lower than what has been harvested by the for-hire vessel anglers in more recent years would shorten the fishing season for the for-hire fishery. As can be inferred from Table 5, any for-hire allocation lower than 70 percent is likely to shorten the for-hire fishing season for red snapper. Among the 5 options for Alternative A-4, only Option 5 is likely to maintain the current red snapper fishing season for the for-hire fishery. But if fishing effort from the for-hire fishery keeps on increasing, a shorter fishing season would likely ensue even with an allocation as high as that provided by Option 5. In fact, under the scenario of an increasing for-hire fishing effort, the fishing season would be shorter under any of the options of Alternative A-4 compared to the status quo. The main reason for this is that under the status quo, an increase in for-hire fishing effort would be accommodated by an increase in the for-hire sector's share of the total recreational quota, understandably at the expense of the private mode anglers.

One other important issue associated with Alternative A-4 relates to the resulting net economic benefit from allocating the recreational quota between the for-hire and private mode sectors. While there are some existing studies that provide some information to assess the economic implications of allocating the recreational quota among various user groups, these information are still not adequate to establish some estimates. It may only be stated that economic theory dictates that the highest economic benefit would occur at an allocation

ratio that equates the marginal valuation of red snapper between the for-hire and private recreational anglers.

In reviewing a previous draft version of this amendment, the SEP (1999) commented that the for-hire sector's increasing share of the recreational quota is more indicative of target effort shift and harvest success than of an increasing effort. Such increase in share may be a result of recreational fishermen making rational choice of the platforms used to conduct their recreational fishing activities. While the SEP comments were not made in the context of determining allocation percentages, these comments can probably be interpreted to say that, if a percentage allocation is established, it would be more beneficial from an economics standpoint to at least maintain current share allocations. This would mean that among the 5 options in Alternative A-4, Option 5, which provides the highest allocation to the for-hire sector, may provide the highest economic benefits. There is a good possibility, however, that a 100 percent allocation in favor of the for-hire sector may not provide the greatest economic benefit, unless the private mode angler's valuation of red snapper is extremely low.

Alternative A-5 is a combination of the Proposed Alternative (or Alternative A-1) and Alternative A-4, and thus the economic impacts would be similar in nature to those discussed under the Proposed Alternative and Alternative A-4. This alternative would be more restrictive than either the Proposed Alternative or Alternative A-4.

Since Alternative 5 would impose both a permit moratorium and a for-hire sector quota, it would incur the impacts, both positive and negative, previously described for the moratorium options (Proposed Alternative and Alternative A-1) and the quota options (Alternative A-4). Through the moratorium, this alternative would stabilize participation and reduce the rate of increased stress to the fishery resources. Economic losses may be initially incurred, however, due to trip cancellation as a result of insufficient for-hire vessels to meet angler demand. Most of the quota options are expected to produce economic losses due to reduced angler trip opportunities due to shortened seasons as a result of quota closures. Thus, Alternative 5 is both more restrictive than either the Proposed Alternative, Alternative A-1 or Alternative A-4 and would be expected to produce greater economic losses than might be incurred under either alternative.

Alternative A-6 is similar in some respects to the Proposed Alternative or Alternative A-5, with the exception that the duration of the moratorium is tied to regulatory actions affecting the recreational red snapper fishery. Such tie-up raises several issues regarding the impacts of the moratorium under Alternative A-6. Obviously, if trigger regulatory actions do not materialize, Alternative A-6 would have similar impacts as the Proposed Alternative. With the mentioned tie-up, Alternative A-6 would appear to negate the very objective of the moratorium, which is to cap the number of for-hire vessels permitted to fish for reef fish and coastal pelagics in the EEZ. In fact, the SSC noted that the moratorium issue is far broader than the red snapper issue as there is only a small fraction of for-hire vessels that fish for red snapper on a daily basis. In addition, if the moratorium is terminated due to trigger

regulatory actions, it would only invite more restrictive regulations on reef fish and also on coastal pelagics, thus defeating the very purpose of Alternative A-6.

### **Environmental Consequences**

*Essential Fish Habitat (EFH):* The area affected by the proposed action in the Reef Fish and Coastal Migratory Pelagic fisheries has been identified as EFH for the Red Drum, Reef Fish, Shrimp, Stone Crab, and Coral FMPs of the Gulf Council; Coastal Migratory Pelagics and Spiny Lobster joint FMPs of the Gulf and South Atlantic Councils; and the Tuna/Swordfish/Shark and billfish FMPs of NMFS HMS. The actions are intended to conserve and enhance the stocks of Reef Fish and Coastal Migratory Pelagics fishes by stabilizing overall the number of fishing vessels in the fisheries. This proposed amendment is not expected to alter existing fishing practices in the recreational for-hire sector of the fishery, and in the context of the fisheries as a whole will not have an adverse impact on EFH; therefore an EFH consultation is not required.

The reef fish habitats and related concerns were described in the FMP/EIS and were updated in Amendment 1, Amendment 5/SEIS, and the generic amendment describing EFH for all Gulf fisheries. Reef Fish Amendment 18/SEIS will give an updated description of EFH. The coastal migratory pelagics habitats and concerns were described in the FMP/EIS and updated in Amendment 1/SEIS, Amendment 3, and the generic amendment describing EFH for all Gulf fisheries. A SEIS will be prepared for this generic EFH amendment during 2001/2002.

*Physical Environment:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. It would allow the Council the time necessary to develop a more comprehensive effort limitation program designed to help restore overfished stocks. The affected fishery is prosecuted with hook-and-line gear. This proposed amendment is not expected to alter existing fishing practices in the recreational for-hire sector of the fishery. Therefore, fishing activities conducted under this proposed alternative would have no adverse impacts on the physical environment.

*Human Environment:* The Proposed Alternative is anticipated to have a beneficial impact on the participants in the affected fisheries by stabilizing participation levels in terms of vessels for the duration of the moratorium. Conversely, the status quo alternative and Alternative A-1 are anticipated to have a negative impact on current participants. Alternative A-3 would have an adverse impact on part-time fishermen, probably greatly reducing the value of their boats. Alternative A-4 would either benefit or adversely affect recreational for-hire participants depending on the sub-option selected. Conversely those options benefitting the for-hire industry would adversely affect the private boat sector. In the short-term the effects of Alternative A-5 would be the same as Alternative A-4, but over the long-term the effects through the moratorium component should be beneficial to the for-

hire sector by reducing effort capacity. It appears unlikely that Alternative A-6 would be approved by NMFS.

*Fishery Resources:* The Proposed Alternative is anticipated to have a beneficial impact on the reef fish and coastal migratory pelagic resources by stabilizing fishing capacity in terms of vessels. Conversely, the status quo alternative and Alternative A-1 would have a negative impact on these resources. Alternative A-3 would likely reduce significantly fishing effort having a greater beneficial impact. Alternative A-4 should not have any effect on red snapper fishery resources because the overall harvest is regulated by the recreational quota, rather than the portion of that granted to the recreational for-hire industry. Overall, Alternative A-5 should have an effect similar to the Proposed Alternative.

*Effect on Other Fisheries:* Because the recreational for-hire vessels harvest other fishery stocks, stabilization of fishing effort in terms of vessels through the moratorium alternative is anticipated to have a beneficial impact when contrasted to the status quo alternative. Because Alternative A-3 would significantly reduce participation of charter vessel operators from Alabama through Texas (see discussion under economic impacts) it would reduce effort on other stocks having a beneficial effect on other fisheries. The effects of Alternative A-4 and A-5 on other fisheries would be similar as described under Fishery Resources.

*Effect on Wetlands:* The alternatives for establishing a moratorium on permits for vessels fishing the EEZ is anticipated to have no impact on coastal wetlands, because they propose to only regulate fishing activities greater than three miles offshore.

## **B. Gulf Charter Vessel/headboat Permits and Endorsements**

**Proposed Alternative: Create a new charter/headboat (for-hire) vessel permit for the Gulf EEZ with endorsements for reef fish, coastal migratory pelagic and dolphin/wahoo (if FMP is implemented). A vessel decal for the permitted vessel will be required. All permits and/or endorsements will be permanently numbered (this is so the permits/endorsements can be tracked through history).**

**NOTE:** An owner of a vessel who desires the new charter vessel/headboat permit for the Gulf of Mexico EEZ, and any of the endorsements to that permit, or any permit or endorsement under this section must submit an application for such permit/endorsement(s) postmarked or hand-delivered not later than 90 days after the effective date of the final rule to implement the Charter Vessel/Headboat Moratorium Amendment. Failure to apply in a timely manner will preclude permit/endorsement issuance even when the vessel owner meets the eligibility criteria for such permit/endorsement.

**Discussion:** The new permit with endorsements would be required of all recreational for-hire vessels fishing for reef fish or coastal migratory pelagics in the Gulf EEZ. The Dolphin/Wahoo FMP framework measure for the Gulf of Mexico has a provision requiring charter vessels fishing for those stocks to have an endorsement to the Gulf permit when the FMP is implemented. The Council will request that the NMFS HMS Branch require that

charter vessels fishing for tuna, HMS, and sharks in the Gulf EEZ obtain an endorsement to the Gulf permit for those fisheries. Such a requirement would need to be a management measure in a subsequent amendment to the HMS FMP.

Currently NMFS would not be able to provide that all permits and/or endorsements be permanently numbered. This is because the current computer system used for the permits files lacks the capacity to include that data. However, the NMFS Permits Branch is scheduled to get an Oracle-based system in FY2002 that will allow creating that numerical tracking system.

Before the final rule for this amendment becomes effective the regional NMFS Permits Branch will notify all eligible persons holding charter vessel/headboat permits for reef fish and those holding permits for coastal migratory pelagics who reside in Gulf states that those permits will expire and, in order to fish the Gulf EEZ, they must apply for and obtain a new Gulf permit with endorsements within 90 days, as provided for in the NOTE above. The Permits Branch will use its computer records to establish those permit holders who would be either eligible or ineligible for the new Gulf permit under the eligibility criteria of Section 6.0 C. Those persons determined to be ineligible will be notified their permit will expire on the effective date of the final rule.

NMFS and the Council will also notify the charter industry that those persons who feel that they can qualify for a permit as a historical captain or for a vessel under construction under the eligibility criteria must apply and submit their records within 90 days of the effective date of the final rule (Also see discussion under the Proposed Alternative of Section 6.0 C).

The discussion of the Proposed Alternative under Section 6.0 C sets forth additional requirements that each eligible group of persons must comply with to apply for and obtain a permit and endorsements within the 90-day period as specified in the NOTE above.

#### **Alternatives Considered and Not Selected:**

**Alternative B-1: For any species under the Coastal Migratory Pelagics FMP to be possessed aboard a charter vessel or headboat fishing in the Gulf EEZ, a Gulf coastal migratory charter vessel/headboat permit must be issued to the vessel and must be on board. This permit may be issued for a vessel if its owner was an owner of a vessel eligible to receive a coastal migratory pelagics permit under the charter vessel/headboat permit moratorium. Applications for the Gulf coast migratory pelagics permit must be submitted not later than 90 days after the final rule to implement the Charter Vessel/headboat Moratorium Amendment is published.**

**Alternative B-2: Status Quo - Do not issue a separate Gulf coastal migratory pelagics charter vessel/headboat permit or a Gulf endorsement for coastal migratory pelagics to the new Gulf permit. Any vessel with valid coastal migratory pelagics permit under the moratorium retains the option to fish in the Gulf EEZ.**

**Alternative B-3: New Gulf of Mexico Federal Waters For-Hire Fishing Permit (GMFWF-HFP): Any vessel permitted to operate as a for-hire vessel in the Gulf EEZ will hold this charter vessel/headboat permit, which will include endorsements for fish species or stock complexes regulated under Federal Fishery Management Plans (FMPs), (i.e., reef fish and coastal migratory pelagics). Evidence of this permit will be a decal suitably attached to the vessel along with a copy of the permit/endorsements on-board the vessel.**

**Alternative B-4: Permits and endorsements can be renewed if the vessel owner can prove by records (including but not limited to income tax returns) that at (1) least 50 percent of his earned income or \$20,000 to \$25,000 of gross income was from for-hire fishing in 1 of the previous 3 calendar years, or (2) at least a gross income of \$20,000 each calendar year was from recreational for-hire fishing or an average of \$20,000 per year for the three previous calendar years.**

**NOTE:** The following applies to Alternative B-4: A person who obtains an endorsement through Sections B or C may renew that endorsement through April 15 following the first full calendar year after obtaining it, without meeting the applicable earned income requirement. However, to further renew the endorsement, the person must meet the earned income requirement not later than the first full calendar year after the endorsement transfer takes place. This would also apply to other eligibility dates.

**Alternative B-5: Allow that a commercial Gulf reef fish and king Mackerel permit holder be able to convert his active commercial permits to a charter vessel Class 1 or 2 permit providing he is able to show an income qualifier of \$50,000 gross income from commercial fishing in one of two or one of three previous years.**

**Alternative B-6: Create the new charter vessel/headboat permit, as in Alternative B-3, which will consist of only one class of vessel (rather than Class 1 and Class 2). (See Appendix A Section B.1).**

**Alternative B-7: Create a new Guide boat Permit for vessels carrying 4 or less recreational fishermen which will include endorsements for the following fisheries: reef fish, coastal migratory pelagic, and any other fishery endorsement created in the future. A vessel decal for permitted vessels will be required. The vessels of persons holding Guide boat Permits will not be included in the moratorium on charter vessel/headboat permits (from Appendix B).**

**Discussion:** The Proposed Alternative would create a Gulf of Mexico endorsement for coastal migratory pelagics to the new charter vessel/headboat permit for all vessels fishing the Gulf EEZ. NMFS Permits Branch personnel feel that it would be easier for the agency and for the permit holders to use an endorsement rather than a separate permit as provided for under Alternative B-1. This would certainly be the case for permit holders operating from the Florida Keys who may periodically fish in both Gulf and Atlantic EEZs.

Currently the Coastal Migratory Pelagics charter vessel permit applies to all vessels fishing in the EEZ of GMFMC, SAFMC, MAFMC, and NEFMC for those species (mackerels, cobia, cero, and little tunny). The intent of the proposed moratorium on permits is that it apply only to permitted vessels fishing the Gulf EEZ. Therefore, those eligible to participate in the coastal pelagics charter vessel/headboat fishery at the start of the moratorium are eligible to apply for the Gulf coastal migratory pelagics endorsement. The Gulf permit and coastal migratory pelagics permit or endorsement will be required aboard charter vessels/headboats for possession of any species under the Coastal Migratory Pelagics FMP in the Gulf EEZ.

Initially any permit holder in the coastal migratory pelagics fishery throughout the Gulf or Atlantic regions could apply for the Gulf endorsement to their permit to fish in the Gulf EEZ. It is likely that some permit holders whose operations are based out of Atlantic ports will do so on speculation that the permit will increase in value over the moratorium period. Alternative B-2 is status quo (no action). Alternative B-3 is essentially the same as the Proposed Alternative but it included Class 1 (transferable) and Class 2 (non-transferable) endorsements to the permit.

Alternative B-4, if selected as a preferred alternative, would create income requirements for renewal of the permit (with endorsements) of either (1) at least 50 percent earned income; or (2) \$25,000 gross income, from recreational for-hire fishing. The AP's position was that \$25,000 gross income was so low that almost all part-time fishermen should be able to qualify, especially as they only had to demonstrate the income requirement 1 out of the previous 3 calendar years. However, for alternatives for eligibility under Section C that do not specify on income requirements the note provides at least one calendar year to comply. This is because permits expire on the birth date of the permit holder and may expire in less than a year.

Alternative B-5 would allow commercial vessel owners grossing at least \$50,000 from commercial fishing in 1 of the 2 (or 1 of the 3) previous years to convert his commercial vessel permit to a charter vessel permit. An annual gross income of \$50,000 for a commercial vessel represents a high volume producer. Such persons are not precluded from purchasing a charter vessel permit after he has sold his commercial vessel permit.

Alternative B-6 would eliminate the Class 1 (transferable) and Class 2 (Nontransferable) endorsements to the new Gulf permit and establish a single class of transferable permit. Under this proposal as set forth in Appendix A the fishery endorsements to this permit would be fully transferable to any vessel owner who held a permit for either fishery on January 1, 2002. (See Alternative C-10 for discussion of that proposal).

Alternative B-7 was proposed by Ms. Walker (See Appendix B) and would have excluded guide boats carrying 4 or fewer passengers from the moratorium on issuance of charter vessel/headboat permits. Guide boats are the fastest growing components of the recreational for-hire fishery (Table 2). Many of these boats fish for estuarine species such as red drum, spotted seatrout, and snook in the estuarine near shore waters of the states. Others fish the coastal flats for bonefish and tarpon. Ms. Walker's position was that probably most of these

fished entirely in state fishery jurisdictions and would not be affected by the moratorium on issuance of charter vessel/headboat permits. Those that fished the EEZ probably did so on an infrequent basis because they were smaller and less seaworthy.

Biological Impacts: The creation of the new Gulf charter vessel/headboat permit and endorsements to it for fisheries (e.g., reef fish and coastal migratory pelagics) should have no biological impact.

Alternative B-4 would result in some reduction in effort and a biological benefit if it was adopted. However, the benefit likely would be moderate because the income requirement of \$25,000 gross income in 1 of the 3 years is moderate. Alternative B-4 would likely eventually eliminate some part-time fishermen and most of the permit holders who are not fishing, but are instead holding permits on the speculation that they may become valuable (i.e. a “use it or lose it” provision).

Alternative B-5 could have an adverse biological impact on stocks overfished and under quotas, if many persons converted commercial permits to charter vessel permits. This is because the catch of the commercial vessels leaving the commercial fishery would always be taken by the vessels remaining in those fisheries, and the vessels converting to charter vessels would increase effort on the recreational allocations and create the potential for overruns.

Alternative B-6 would likely, over the long-term, have an adverse biological impact on stocks overfished and under quotas. This would result from eliminating the nontransferable Class 2 endorsements which, over time, would be reduced in number through attrition, thereby reducing effort capacity. (Also see discussion under Alternative C-10). This alternative, by having an eligibility date in the future (2002) would likely result in excessive latent fishing capacity from speculators obtaining permits.

Alternative B-7 would likely have a very moderate adverse biological impact as the exclusion of guide boats from the permit moratorium would allow for more vessels to operate in the EEZ fisheries.

Economic Impacts: The Proposed Alternative, Alternative B-1, Alternative B-3, and Alternative B-6 would have relatively minor additional economic effects on fishing participants over those that may be imposed by alternatives governing initial eligibility under Section C. The additional effects would mainly be in the form of additional paper work and fees for securing a new permit and/or endorsement. These alternatives are not expected to result in additional short-run reduction in the number of permitted for-hire vessels fishing for coastal pelagics in the Gulf. Those that have been fishing in the Gulf are likely to apply and qualify for the endorsement or permit. Once the endorsement or permit is in place, those with coastal pelagics charter permits located outside the Gulf may be able to fish in the Gulf only upon acquisition of an existing Gulf endorsement or permit. This would prevent a shift in effort into the Gulf from those charter vessels fishing in other areas that would be accretive to existing effort.

Alternative B-4 pertains to renewal of permits and endorsements. The effects of this measure is likely similar to those of Alternative A-3, although the magnitude of effects would be less because of the \$25,000 option which the AP has determined to be a relatively low level. Once a permittee qualifies for permit renewal under this alternative, then he/she would qualify for permit renewal throughout the 3-year duration of the moratorium. On the other hand, failure to qualify the first year implies foregoing the charter vessel business throughout the moratorium, unless permit transfers by sale are allowed during the moratorium.

Alternative B-5 is very unlike the other alternatives in the sense that it would allow the number of charter permits to increase (and the number of commercial permits to decrease). At an income level of \$50,000 which is required to convert a commercial permit to a charter permit, the commercial permit holder is most likely a high volume producer. This income level could be relatively high for one to undertake the conversion. In addition, the commercial permittee would have to weigh the cost/benefits of simply buying (if allowed) a charter permit during the moratorium as against converting the permit. One such consideration is that a charter permit when purchased in the market may cost less than the commercial permit so that one would simply sell his commercial permit and buy a charter permit. This would result in no change in overall commercial permits and charter permits. But since the charter permit would be most likely owned by one that may be less or no longer active in the fishery, the transfer of permit may result in an increase in effort in the charter fishery. Another important consideration here is that the commercial permit moratorium may last longer than the charter permit moratorium so that converting a commercial permit to a charter one would eventually be a losing position for the permittee. It is then likely that only a small number of commercial permits may be converted to a charter permit under this alternative.

Like the Proposed Alternative and Alternative B-3, Alternative B-6 creates a new permit that would replace existing for-hire vessel permits for fishing in the Gulf and to which species endorsements may be attached. Under Alternative B-6, however, only one class of permits would be issued as is the case for the Proposed Alternative. Possibly other than simplifying the permit application process, this measure would have relatively minor additional economic effects on fishing participants over those that may be imposed by alternatives governing initial eligibility under Section C. It may be noted that in combination with Alternative C-10, Alternative B-6 would allow more vessels in the fishery at the start of the moratorium. Since the permit is fully transferable, attrition would happen at a much slower pace than under the case of having two permit classes, one of which is not transferable. This alternative then would not result in an immediate or medium-term reduction of for-hire vessels in the fishery. In fact, this may increase the number of vessels that may eventually operate in the fishery. But to the extent that it would create a relatively simple moratorium and accommodate practically all those that may want to enter the fishery, this alternative would impose the least adverse economic impacts in the short-run. In the long-run, this may reduce the profitability of vessels in the fishery.

Alternative B-7 would provide a list of those other active participants in the for-hire fishery that may only occasionally fish in the EEZ. In this sense, permitting of these boats may add some accuracy in expanding the recreational survey to arrive at aggregate catches of reef fish and mackerel. But this permitting of certain boats without inclusion in the moratorium would only provide some loophole that would result in an increase in the number of for-hire vessels/boats, thus negating the purpose of the moratorium. In addition, although these boats only fish in the EEZ occasionally, the permitting requirement would provide some incentive for these boats to increase their operations in the EEZ. This would only put more fishing pressure on overfished reef fish and coastal pelagic stocks.

## **Environmental Consequences**

*Essential Fish Habitat (EFH):* The alternatives for permits and endorsements are anticipated to have no or neutral impact on EFH, because they are largely expected to cap the vessel participation at status quo and not result in increases.

*Physical Environment:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. It would allow the Council the time necessary to develop a more comprehensive effort limitation program designed to help restore overfished stocks. The affected fishery is prosecuted with hook-and-line gear. This proposed amendment is not expected to alter existing fishing practices in the recreational for-hire sector of the fishery. Therefore, fishing activities conducted under this proposed alternative would have no adverse impacts on the physical environment.

*Human Environment:* The Proposed Alternative should have very little or no impact on vessel owners in that it creates a coastal migratory pelagics and a reef fish endorsements in lieu of the current separate permits. Similarly, the new charter vessel/headboat permit created by Alternative B-3 should have little or no impact. (The effect of Class 2 permit endorsements is discussed under Section C.) Alternative B-4, if selected, could have an adverse impact on some permit holders in that failure to meet the income requirement would result in their permit being revoked by NMFS. However, since the income requirement is not high, the alternative likely would affect principally part-time fishermen and persons not fishing but holding a permit on speculation that it will become valuable. Alternative B-5 would have allowed some marginal participants in the commercial fisheries to obtain a charter vessel permit without purchasing one from other fishermen. Alternative B-6 providing for a single class of permit in lieu of Class 1 (transferable) and Class 2 (nontransferable) permit endorsements is more liberal than the other endorsements will eliminate the adverse impact on persons who would have qualified only for the Class 2 endorsement. Conversely, over time, it may adversely affect persons who would have qualified for the Class 1 endorsement by creating more transferable permits, thereby reducing any gains in reduction of excess effort capacity that would have occurred from the

Class 2 endorsement. Alternative B-7 would have allowed guide boats to fish the EEZ without permits.

*Fishery Resources:* To the extent the alternatives stabilize or reduce the number of vessels in the Gulf fisheries the effect on reef fish and coastal migratory pelagics fishery resources will be beneficial. The Proposed Alternative is anticipated to cap vessels at the current level. Alternative B-6 would likely, over the long-term, have an adverse biological impact on stocks overfished and under quotas. This would result from eliminating the nontransferable Class 2 endorsements which, over time, would be reduced in number through attrition, thereby reducing effort capacity. (Also see discussion under Alternative C-10). Alternative B-7 would more likely, over time, result in more vessels fishing the EEZ having an adverse affect on the fishery resource being managed, i.e., reef fish and coastal migratory pelagics.

*Effect on Other Fisheries:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. Additionally, moratoriums are in effect on the issuance of commercial fishing permits for reef fish, coastal migratory pelagics, and highly migratory species in the Gulf EEZ. These moratoria which will prevent effort shifting into these fisheries by displaced recreational for-hire fishermen.

*Effect on Wetlands:* The alternatives for permits and endorsements for vessels fishing in the EEZ are anticipated to have no impact on coastal wetlands, because they propose to only regulate fishing activities greater than three miles offshore.

### **C. Initial Eligibility Requirements for Permits And/or Endorsements**

**Proposed Alternative: Provide a fully transferable permit and endorsements to the following:**

- 1. Provide for fully transferrable reef fish or coastal migratory pelagic charter/headboat permits to individuals/charter vessels who held valid permits on March 29, 2001, or held a valid permit during the preceding year or had applied for such permits received in the NMFS office by March 29, 2001 (03/29/01).**
- 2. Any person who can demonstrate to NMFS they had a charter/ headboat(for-hire) vessel under construction prior to 03/29/01 with copy of contract and/or receipts for expenditures of at least \$5,000.00.**
- 3. Provide for Historical Captain Permits as follows:  
Any U.S. Coast Guard licensed captain, who can demonstrate to NMFS, they were licensed by the USCG and operated, (as a Captain), a for-hire fishery permitted vessel prior to 03/29/01, but did not have a fishery permit issued in their name, and who must qualify for the permit within 90 days of implementation of the final rule for this amendment and who must demonstrate at least 25% of their earned income came from recreational for-hire fishing in 1 of the last 4 years ending with 03/29/01.**

**They will be issued a letter of eligibility to be replaced by permit/endorsements to be used only on a vessel that they operate as a captain.**

Discussion: The Proposed Alternative provides for a single class of transferable permit with endorsements for reef fish and coastal migratory pelagic for-hire fisheries as provided for in Section B. Eligibility under Subsection 1 of the Proposed Alternative applies to vessels that had a valid (not expired) reef fish and/or coastal migratory pelagics permit at some time during the one-year period immediately prior to 03/29/01 or had applied for the permit prior to 03/29/01 (i.e., applied for means the application for the permit was received by the NMFS permit office on or before 03/29/01). The current charter vessel/headboat permits for reef fish and /or coastal migratory pelagics are issued for one year and the expiration date is listed on the permit. It is incumbent on the permit holders to renew their permit within one year of the expiration date on the permit, and, in this case, before the final rule for the amendment is implemented.

The Proposed Alternative also provides eligibility for a permit for a recreational for-hire vessel under construction prior to 03/29/01. If that vessel was being constructed by a firm or another person the owner applying for the permit must provide to NMFS a copy of the contract and/or receipts for expenditures of at least \$5,000 prior to the 03/29/01 date. If that vessel was being constructed by the vessel owner he/she must provide NMFS with receipts for expenditures of at least \$5,000 prior to the 03/29/01 date.

The Proposed Alternative would also provide a historical captain vessel permit to any U.S. Coast Guard licensed captain who can demonstrate to NMFS that they were licensed by the USCG and operated (as a captain) a for-hire vessel permitted in either the reef fish or coastal migratory pelagic fisheries prior to 03/29/01 but did not have a charter vessel/headboat permit issued in their name, or to a corporation in which they were a shareholder, for either fishery. Such applicant for the historical captain vessel permit must submit to NMFS records that demonstrate at least 25 percent of their earned income came or was derived from recreational for-hire fishing in 1 of the last 4 years ending with 03/29/01 (i.e., calendar years 1997, 1998, 1999, or 2000). Such records should include, but not be limited to, income tax records. The applicant should also submit to NMFS an affidavit from a vessel owner, witnessed by a notary public, certifying (1) the period the applicant served as captain of a permitted vessel; (2) whether the boat was uninspected [6-pack] or had a safety inspection by the U.S. Coast Guard; and (3) a statement certifying whether the permitted vessel held the reef fish or coastal migratory pelagics for-hire permit or both. The applicant should also submit a copy of the U.S. Coast Guard certificate of inspection (if any) for the vessel he operated.

The applicant for the historical captain's permit must submit records related to eligibility within 90 days of the effective date of the final rule implementing this amendment. The letter of eligibility granted to a historical captain who qualifies for a permit shall be for the same passenger capacity, as established by a U.S. Coast Guard safety certificate for the vessel he/she operated during the calendar year used to demonstrate that 25 percent of his/her earned income was from recreational for-hire fishing. It shall also specify whether

only the reef fish or coastal migratory pelagic endorsement or both will be granted. The letter of eligibility issued to a historical captain entitling him/her to a permit and endorsements shall be good for the duration of the moratorium.

The applicants for permits and endorsements under all three subsections of the Proposed Alternative must submit their applications and records within 90 days of the effective date of the final rule implementing this amendment (See following NOTE). For those holding a valid permit sometime during the year prior to 03/29/01 or those for which the owner applied for a permit on or before 03/29/01 and was subsequently issued a permit, the permit holder will be mailed an application for the new charter vessel/headboat (for-hire) permit and endorsements, with notice their existing permit will expire 90 days after the effective date of the final rule and that they must obtain the new permit within that 90 days. For those issued a permit after 03/29/01 (excluding those who applied for said permit on or before 3/29/01), NMFS would notify them their permit will expire on the effective date of the final rule and cannot be renewed. Both groups of persons would be notified of the eligibility requirements to apply for a permit (and endorsements) for a vessel under construction and for a historical captains permit, and of the requirements that those records be submitted within 90 days of the final rule. Both the Council and NMFS would, by news release, notify the industry and public of these requirements of this Section 30 to 60 days prior to the final rule's effective date.

NOTE: An owner of a vessel who desires the new charter vessel/headboat permit for the Gulf of Mexico EEZ, and any of the endorsements to that permit, or any permit or endorsement under this section must submit an application for such permit/endorsement(s) postmarked or hand-delivered not later than 90 days after the effective date of the final rule to implement the Charter Vessel/Headboat Moratorium Amendment. Failure to apply in a timely manner will preclude permit/endorsement issuance even when the vessel owner meets the eligibility criteria for such permit/endorsement.

NOTE: A vessel owner may request an appeal of the NMFS RA's determination regarding initial permit/endorsement eligibility by submitting a written request for reconsideration to the RA. Such request must be postmarked or hand-delivered within 30 days of the date of the RA's notification denying initial permit/endorsement issuance and must provide written documentation supporting permit/endorsement eligibility. (See structure of the appeals process under Section G.)

**Alternatives Considered and Not Selected:**

**Alternative C-1: All persons holding a permit on the date of implementation of this amendment are eligible.**

**Alternative C-2: All persons holding a permit on September 16, 1999 or November 11, 1999 are eligible.**

**Alternative C-3: Using the control date of November 18, 1998, the following persons are eligible:**

- a. Persons with vessels issued permits prior to the control date and that remained continuously in the fishery, and/or**
- b. Persons who held vessel permits prior to the control date but were issued a new vessel permit when they replaced the vessel after that date and who remain in the fishery, and/or**
- c. Persons who purchased a vessel after the control date from a person whose vessel was permitted prior to the control date and who left the fishery, and/or**
- d. Persons purchasing new vessels and issued new permits after the control date.**

Discussion: Alternative C-1 using the implementation date likely would result in many persons obtaining permits on the speculation that they will be valuable on transfer. This will likely greatly increase the number of permitted vessels, making reduction of effort capacity much more difficult. Alternative C-2 would greatly reduce the complexity of the alternatives and the records necessary to determine who is eligible and thus simplifying the appeals process. Under Alternative C-2 there would be little speculative entry. However, information indicated there were likely many vessels engaged in the fishery prior to these control dates that did not hold permits.

**The following numbers of permits would be affected under Alternative C-3 using the control date of November 18, 1998:**

Reef Fish Fishery Permits: The NMFS permit records of August 1999 indicate that under Alternative C-3 there are 20 persons who replaced their vessel, as under sub-option (b), 27 persons who purchased a vessel from a person who left the fishery, as under sub-option (c), and 294 persons who purchased new vessels and entered the fishery after the control date, as under sub-option (d). The remainder of the permit holders (722 persons) have had the same permitted vessel since prior to the control date, as under sub-option(a). Therefore, selection of only Alternative C-3(a) would exclude 341 vessels and permit holders from the fishery. Selection of Alternative C-3(a) and (b) would exclude 314 vessels and permit holders from the fishery. Selection of C-3(a), (b), and (c) would exclude 294 vessels and permits from the fishery.

Coastal Migratory Pelagics Fishery Permits: The NMFS permit records of August 1999 indicate that under Alternative C-3 there are 47 persons who replaced their vessel, as under sub-option (b), 68 persons who purchased a vessel from a person who left the fishery, as under sub-option (c), and 343 persons who purchased new vessels and entered the fishery after the control date, as under sub-option (d). The remainder of the permit holders 1375 persons have had the same permitted vessel since prior to the control date, as under sub-option(a); however, this includes vessels fishing the Atlantic coast. Therefore, selection of only Alternative C-3(a) would exclude 488 vessels and permit holders from the fishery. Selection of Alternative C-3(a) and (b) would exclude 420 vessels and permit holders from the fishery. Selection of C-3(a), (b), and (c) would exclude 343 vessels and permits from the fishery.

The analysis above was prepared for Alternative C-3 when it was presented at public hearings in December 1999. The total number of vessels permitted on November 18, 1998 (the control date) was 940 for Gulf ports. In the August 1999 records used for the analysis above the total number of vessels permitted was 1073 or about 130 more. By August 2000 (Tables, 11, 11a and 11b) the total number of permitted vessels had increased to 1650 or about 700 more vessels. Therefore, had Alternative C-3 been selected the impacts on the number of vessels affected would have been much greater than expressed above. The changes listed here are indicative that a large number of captains were operating in the fishery without knowledge that permits were required or in violation of the law. The impact analysis can be updated by adding about 600 vessels to these above under C-3(d).

**Alternative C-4: Eligibility Requirements for Class 1 endorsements. A Class 1 permit endorsement would be issued to eligible boat owners under the provisions of 1 through 4 below:**

- (1) All persons continuously holding a Charter Vessel/Headboat Permit For Coastal Migratory Pelagic Fish and/or a Gulf of Mexico Charter Vessel/Headboat permit for Reef Fish during the period starting 30 days prior to and ending 30 days after the original control date of November 18, 1998, are eligible for a Class 1 endorsement in the fishery or fisheries they held permits in.**
- (2) Persons who held vessel permits during the period starting 30 days prior to and ending 30 days after the control date of November 18, 1998, but were issued new vessel permits when they replaced the vessel after that control date and are still in the fishery (or fisheries), will receive a Class 1 endorsement in the fishery or fisheries they held permits in.**
- (3) Persons still in the fishery (or fisheries) who purchased a vessel after the control date, but prior to date of implementation of this amendment from a person and/or corporation who held a valid permit during the period starting 30 days prior to and ending 30 days after November 18, 1998, shall be given a Class 1 endorsement in the fishery or fisheries that the vessel was permitted in provided that the seller of said vessel has not applied for a replacement permit.**
- (4) And to all vessel owners who can demonstrate through records (including, but not limited to individual, business, corporate, and/or partnership tax returns) that they have been in a Gulf or Gulf state recreational for-hire fishery for the past 5 years, prior to the implementation date of the amendment, in addition the owner must have obtained the required charter vessel permits by September 13, 2000. Persons qualifying for a Class 1 permit endorsement under this subsection would be issued both the reef fish and coastal migratory pelagics endorsement, if they request both.**
- (5) Class 1 endorsements will be fully transferable in accordance with Alternative D-5.**

NOTE: The NMFS Permits Branch recommends that a period starting 30 days prior to and ending 30 days after the control date be used as in Alternative C-4. They felt that this would provide a more accurate documentation of persons in the fishery. That is because permits with endorsements expire on the permit holder's birth date and the permit is immediately listed as expired. Most persons normally renew their permits within several weeks and would therefore qualify for a permit under the moratorium.

Discussion: Alternative C-4 provides for a fully transferable Class 1 endorsement to the Gulf permit to persons who: (1) held either or both of the charter vessel permits continuously since before the control date (November 18, 1998); (2) held one or more of the permits prior to the control date but replaced their vessel and were issued a new vessel permit; (3) purchased a vessel after the control date from a person who held a permit for the vessel prior to the control date and left the fishery; and (4) all vessel owners who can demonstrate through records that they have been in the Gulf EEZ or Gulf state for-hire fishery for the past 5 years prior to the date of implementation of this amendment (approximately May or June 2001), provided they obtained a charter vessel permit by September 13, 2000. Sections (1) through (3) include all the persons who have been operating in compliance with the rules requiring charter vessel permits since November 18, 1998. Section (4) provides for most of the vessel owners historically dependent on recreational for-hire fisheries including those who regularly or occasionally fished the EEZ without a permit, and those who fished exclusively in a Gulf state's waters but may wish to obtain a permit. This latter category of vessel owners will add more permits and endorsements, but likely not much additional effort, in that these vessels are already in the fishery, and may in some states be harvesting reef fish and coastal migratory pelagics fish, or even if they get a permit, many are likely to continue to fish largely in state waters for other fish, and only target EEZ fish on rare occasions. Section (4) makes it possible for most of the guide boats currently not permitted, to obtain permits, if the owner wishes to do so.

As indicated in the final paragraph of the discussion under Alternative C-3 a very large portion of the captain's and/or owners were unaware of the permit requirement and would have been excluded had alternative C-4 subsections (1), (2), and (3) only have been selected. As pointed out in that paragraph at the time of the November 18, 1998, control date 940 vessels operating out of Gulf ports had permits and by August 2000 (Tables 11, 11a, and 11b) the numbers with permits had increased by about 700 to 1650.

**Alternative C-5: Eligibility Requirement for Class 2 endorsement: If a vessel owner who obtained a permit after November 18, 1998, does not qualify for a Class 1 endorsement under Alternative C-4 and if the vessel owner can prove by records (including but not limited to income tax returns) that he was in the for-hire fishing business at least 1 of the 3 years 1996, 1997, or 1998, and his income tax return shows that either at least 50 percent of his earned income or \$25,000.00 of gross income was from (for-hire) charter fishing, the vessel owner will be eligible for a Class 2 endorsement in the fishery or fisheries he held permits in. (See NOTE below).**

NOTE: In this document, all reference to the term “vessel owner” means individuals, corporations, and/or partnerships. The income qualifier for corporations and/or partnerships will be the majority stockholder and/or partner.

Discussion: Alternative C-5 provides for a Class 2 permit endorsement(s) for new entrants into the fishery after the control date (November 18, 1998) who cannot qualify for the Class 1 endorsements. However, they must demonstrate they made at least 50 percent of their earned income or \$25,000 gross income from for-hire fishing in at least one of the years 1996, 1997, or 1998. The Class 2 endorsement is not transferable to another person, but can be transferred between uninspected vessels (6 passengers or less) and between inspected vessels (more than 6 passengers) by the owner. The Class 2 endorsement can be used as long as the owner is in the fishery, but is surrendered to NMFS on his retirement. Therefore, this measure will, over time, result in a reduction of effort in the fisheries.

**Alternative C-6: Provide for a Historical Captain Permit as follows:**

**(1) A historical captain is a USCG-licensed captain who is in the fishery at the time this amendment is implemented and who has operated continuously a for-hire fishing vessel in the Gulf of Mexico as a USCG licensed captain for a minimum of 5 years prior to November 18, 1998, and did not own his own vessel or have a permit issued in his name during that time.**

NOTE: Qualifying period of 5 years prior to November 18, 1998, means a minimum of 5 years immediately preceding November 18, 1998 (i.e., minimum period is November 19, 1993 through November 18, 1998).

**(2) The historical captain must apply and qualify for the historical captain permit within 90 days of enactment of this regulation. The captain must qualify by providing records, including but not limited to income tax records that demonstrate at least 50 percent of his earned income came from recreational for-hire fishing, for the calendar years 1993 through 1997, i.e., 5 years prior to 1998, as above.**

**(3) The permit and endorsement issued to a historical captain can only be used on a vessel owned by the historical captain and will be equivalent to that for a Class 2 uninspected vessel (6-passenger). A historical captain qualifying for a vessel endorsement under this section will be issued a non-transferable Class 2 Gulf charter vessel/headboat permit and endorsement(s) that can be used when the captain has provided records to NMFS that demonstrate he has purchased a vessel.**

Discussion: Alternative C-6 provides criteria under which licensed captains who *are currently in the fishery and* have operated a for-hire vessel in the Gulf for 5 years prior to the control date of November 18, 1998, can become eligible to qualify for a vessel permit/endorsement equivalent to that for a Class 2 uninspected vessel (6 passenger). However, he must purchase a vessel in order to use the permit. The AP felt that it provided a fair opportunity for captains to work their way up into the fishery. They also felt it was fair that the permit be issued for a Class 2 uninspected vessel (6-pack) which is usually the

starting level for new entrants to the EEZ fishery. Further advancement by the historical captain would require that he purchase a permit for a larger class vessel. Alternative C-6 would allow an increase in fishing effort which the AP did not feel would be very significant, but which they were unable to quantify.

Ms. Walker's Option C(1) from Appendix B for historical captain's permit was less restrictive than Alternative C-6 allowing qualification based on 1 of the 3 past years prior to September 13, 2000. The Proposed Alternative subsection (3) is less restrictive than Ms. Walker's Option. There are no data that would allow quantification of the number of permits that would be issued in these three cases. The AP indicated they expected the number qualifying under Alternative C-6 would be limited but did not provide a quantitative estimate.

**Alternative C-7: Any person who can prove (demonstrate) to NMFS that they had a charter vessel under construction prior to the control date of November 18, 1998, will be issued a Class 1 endorsement. In order to receive the endorsement, the boat owner will provide to NMFS a copy of the contract dated prior to November 18, 1998, and/or receipts dated prior to November 18, 1998, for substantial expenditures (of at least \$5,000) of a boat under construction along with proof of the legal transfer of monies for deposit or expenditures by canceled check, receipt for cash, or electronic transfer receipt, also dated prior to November 18, 1998.**

**NOTE:** Eligibility for either the reef fish or migratory coastal pelagics charter vessel/headboat permit is considered separately. Some persons hold both permits and others hold only one or the other.

**Alternative C-8: Provide Permits/Endorsements for Boats Under Construction:**

- (1) Vessel owners, who were or are in the recreational for-hire business (i.e., had been issued a Charter Vessel/Headboat Permit for Coastal Migratory Pelagics and/or a Gulf of Mexico Charter Vessel/Headboat Reef Fish permit) and who can prove that a vessel was under contract to be built or was under construction prior to November 18, 1998, will receive a Class 1 endorsement in the fishery or fisheries that they held permits in prior to November 18, 1998.**
- (2) In order to receive the endorsement, the boat owner will provide to NMFS a copy of the contract dated prior to November 18, 1998, and/or receipts dated prior to November 18, 1998, for substantial expenditures (of at least \$5,000) of a boat under construction along with proof of the legal transfer of monies for deposit or expenditures by canceled check, receipt for cash, or electronic transfer receipt, also dated prior to November 18, 1998.**
- (3) Vessel owners who can prove that a vessel was under contract to be built after November 18, 1998, and prior to January 8, 2000, after complying with the eligibility requirements for Class 2 endorsements under Alternative C-5 and B-**

**6(2) (above) providing NMFS with a copy of the contract and receipts for expenditures during that period will receive a Class 2 endorsement in the fishery or fisheries that they request.**

Alternative C-7 for vessels under construction was selected by the Council as a preferred alternative prior to the hearings held in February 2001 (See Section 12.0). It was a modification of Alternative C-8 subsection (1). Alternative C-7 was more restrictive than Alternative C-8. Ms. Walker, under Option C (1)(a) of Appendix B had an alternative similar to the Proposed Alternative except the control date was 09/13/00 which was less restrictive than Alternatives C-7 and C-8. The Proposed Alternative under subsection (2) is the less restrictive of the alternatives. In none of these cases are there data that would allow quantification of the number of permits that might be issued.

**Alternative C-9: Instead of providing eligible historical captains under Alternative C-6 with the vessel permit, NMFS would provide him/her with a letter of eligibility for a permit. The letter could be exchanged for a permit when the captain demonstrated to NMFS that he/she had purchased a vessel, provided that occurred within five years of the date that the letter was issued. The letter is non-transferable.**

Discussion: Alternative C-9, if selected, would alter Alternative C-6 only to require the historical captain to purchase a vessel within five years as recommended by the AP.

**Alternative C-10: Provide for a fully transferable endorsement to the new Gulf charter vessel/headboat permit for reef fish and coastal migratory pelagics fisheries to vessel owners who hold a charter vessel permit for either fishery on or before January 1, 2002. New permits will not be issued to persons obtaining those permits after January 1, 2002, as above. (See Appendix A Sections C.1. and A. 2.).**

Discussion: Alternative C-10, like Alternative C-1, would result in a greater number of persons obtaining permits, some of whom on the speculation that the permits will be valuable on transfer. This will likely greatly increase the number of vessels qualifying, thereby, making reduction of effort capacity more difficult unless it is followed by a limited access program to reduce the number of participants that qualified under the more liberal time periods. (Also see discussion of Alternative B-7).

Biological Impacts: Stabilization of or reduction in effort in terms of vessels in the recreational for-hire sector would assist the Council in constraining recreational landings within those allocations. This action would also and have a beneficial effect on stocks that are overfished or approaching an overfished state. Such action likely may be necessary in arresting overfishing for some stocks by reducing the fishing mortality.

The Proposed Alternatives typically are less restrictive than many of the alternatives considered and not selected. Some of those alternatives while resulting in fewer permitted vessels would have excluded vessels that were actually fishing but were doing so without a permit. The Council, while recognizing the date 03/29/01 is potentially less restrictive,

does feel that it caps the number of vessels at a level that was participating in the fishery; therefore, it should stabilize the number of vessels for the duration of the moratorium.

Subsections (1), (2), and (3) of Alternative C-4 would contribute to stabilizing effort by limiting participants to those who were operating with vessel permits at the time of the control date or who replaced persons operating with vessel permits at that time. Subsection (4) of Alternative C-4 allows historical participants (i.e., fishing 5 continuous years or longer) who were operating without the charter vessel permits to participate, if they choose to apply and meet the eligibility requirements. Although this potentially allows for an increase in effort that could have an adverse impact, in reality it may not represent much of an increase as many of these new participants were fishing without the knowledge permits were required. Therefore, the degree to which effort might be increased cannot be quantified. The establishment of the Class 2 non-transferable endorsement by Alternative C-5 would have a beneficial biological impact, over time, through the reduction in effort that will occur through attrition, i.e., surrendering of permits as persons leave the fisheries. Alternative C-6, providing for issuing Class 2 permit endorsements to historical captains, would provide for an increase in effort, having an adverse biological impact. Again, the degree to which this would increase effort cannot be quantified, but the AP did not feel it would be significant. Alternative C-9, if selected, would to some unmeasurable extent reduce that increase in effort. Alternative C-7 would increase participation, and thus effort, to such a limited extent it probably cannot be measured.

Alternative C-10, like Alternative C-1, would result in a greater number of persons obtaining permits, some of whom on the speculation that the permits will be valuable on transfer. This will likely greatly increase the number of vessels qualifying, thereby, making reduction of effort capacity more difficult unless it is followed by a limited access program to reduce the number of participants that qualified under the more liberal time periods.

Economic Impacts: The selection of criteria on initial eligibility for permits under a moratorium has proven to be a controversial issue, as evidenced by the experience in the commercial red snapper and king mackerel fisheries. It is expected to be no different for the for-hire sector, especially that as it currently stands this amendment provides the most complex initial eligibility requirements for a permit moratorium. While the issue of equity is at the forefront of this controversy, the provision on eligibility for initial distribution of permits also has economic implications.

Since the proposed moratorium is primarily intended to stabilize the fishery while the Council determined the actions needed to restore overfished stocks and considers whether some type of controlled access management is needed, the selection of an alternative for initial distribution of permits has no major consequence on economic efficiency. This is based on the understanding that once an alternative under this section is selected, it would set the maximum number of eligible participants throughout the period of the moratorium. The only time economic efficiency may be affected is when the moratorium is converted into a license limitation that maintains the same number of participants in the fishery without an added provision to rationalize overall effort in the fishery. The major economic implication

of choosing initial eligibility criteria relates to the possibility that some participants may be initially excluded from the fishery.

Alternatives C-4 and C-7 stipulate eligibility requirements for Class 1 licenses while Alternatives C-5 and C-6, for Class 2 licenses. One major difference between the two license types is that a Class 1 license is transferable while a Class 2 license is not. Alternatives C-1, C-2, and C-3 and C-10 provide for only one type of license. Alternative C-8 provides for either a Class 1 or Class 2 license depending on the date a vessel was under contract to be built. Alternative C-9 provides for a non-transferable letter of eligibility for a permit.

Among the alternatives, Alternative C-1 would provide the greatest number of participants during the moratorium, followed closely if not by Alternative C-10, then by the Proposed Alternative and Alternative C-2. Alternative C-3 closely resembles Alternative C-4, but the former is likely to allow more participants than the latter primarily because it allows anybody who purchased new vessels and issued new permits after the control date. The remaining alternatives would more likely allow fewer participants.

Second only to Alternative C-1 and Alternative C-10, the Proposed Alternative is the most liberal among the alternatives considered. As of March 29, 2001, there are about 2,226 for-hire vessel permits issued with home ports in the Gulf states, although this includes vessels operating out of the east coast of Florida. This number significantly differs from the permit number of 940 as of November 18, 1998 (original control date) and 1,650 as of August 2000. This increase is undoubtedly motivated by the public's awareness of the impending moratorium, although it is likely that the increase comes from those that were already operating for-hire vessels in the fishery but did not secure the required permit. In this sense, this alternative would result in minimal negative economic impacts on the fishery, but it presents the possibility that the moratorium would not result in any fishing effort reduction in the for-hire fishery.

Under Alternative C-1, the number of permits may be expected to exceed that of the Proposed Alternative. Some of the excess permits may be gotten for speculative purposes, since it is very likely that those that intend to actually operate for-hire vessels in the Gulf may have already secured permits before the proposed cut-off date of March 29, 2001. In addition, a permit costs a person only about \$30 to \$40 for the first one and \$20 for each additional permit. Since permits are tied to vessels, it is very likely that most permits secured for speculative purposes are for charter vessel operations, since in general charter vessels are less costly to own and operate than headboats.

Considering the fact that this amendment has been in progress for some time now, the necessity of securing for-hire vessel permits has become well known. In this sense, there is a high likelihood that Alternative C-10 would have the same effects as Alternative C-1. Alternative C-2 would result in more permits issued than Alternative C-3, but less than under the Proposed Alternative, Alternative C-1 or Alternative C-10.

The number of vessels excluded from the fishery under Alternative C-3 has been discussed above, given some combinations of the various sub-options. For example, based on permit records from August 1999, sub-option (a) could reduce the number of reef fish vessels by 341 and coastal pelagic vessels by 488. The two numbers are not directly additive since some vessels have both reef fish and coastal pelagic permits. Combinations of the sub-options would exclude fewer vessels. For example, combining sub-options (a), (b), and (c) would exclude 294 reef vessels and 343 coastal pelagic vessels. Based on permit records for August 2000 these two values could be increased by about 600 vessels. Again, the two numbers are not additive for a similar reason stated above. Alternative C-3 then, may be expected to impose a fair amount of forgone opportunities for many vessels. Holland et al. (1999) reported that an average vessel requires \$60,000 (charter vessel in Georgia through North Carolina) to \$226,000 (headboat in Florida) in cost outlay, a significant portion of this value would be lost due to the choice of Alternative C-3. If, as an example, it is assumed that sub-option (a) would exclude about 341 reef vessels from the fishery and the loss in value to each of these vessels is assumed to be 50 percent of the financial outlay<sup>5</sup>, choice of this sub-option would mean that \$10 to \$39 million in vessel value would be lost by the industry. It may be noted, though, that part of this loss may be offset by the increase in the profitability of the remaining vessels.

To the extent that Alternative C-4 closely resembles Alternative C-3, the described impacts of Alternative C-3 are likely to arise under Alternative C-4. The impacts of Alternatives C-5, C-6, C-7, and C-8 cannot be determined, but it may be noted that these other alternatives are bound to alleviate the potential adverse impacts of Alternative C-4, primarily because it would allow more participants in the fishery. The impacts of Alternative C-9 is similar to those of the Proposed Alternative pertaining to historical captains.

To the extent that vessel reduction would translate to cancellations in angler trips, the greater the number of vessels excluded the larger would be the loss in consumer surplus to anglers. In addition, excluding vessels from continued participation in the fishery would create rippling effects in varying degrees on the local economies. Sutton et al. (1999) estimated that the charter vessel industry generated (from charter vessel revenues) direct, indirect, and induced economic output of \$13.9 million in Alabama, \$6.6 million in Mississippi, \$4.4 million in Louisiana and \$17.6 million in Texas while the party boat industry generated (from party boat revenues) direct, indirect, and induced economic output of \$0.35 million in Alabama and \$1.7 million in Texas. The corresponding economic impacts for the other states are \$128 million for charter vessels and \$23 million for headboats in Florida, \$5 million for charter vessels in Georgia, \$7.5 million for charter vessels and \$2.4 million for headboats in South Carolina, \$22 million for charter vessels and \$3.4 million for headboats

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<sup>5</sup>Sutton et al. (1999) found that the mean percentage of time spent targeting snappers alone was 49 percent for charter vessels and 70 percent for party boats for those operating out of the states of Alabama through Texas. Holland et al. (1999) reported that for Florida the mean percentage of time spent targeting reef fish was 21 percent for charter vessels and 43 percent for headboats. The corresponding numbers for Georgia through North Carolina were much lower.

in North Carolina.<sup>6</sup> Any reduction in the number of vessels that would translate to reductions in the number of angler trips taken through the for-hire vessels would subsequently reduce the economic impacts to local economies. The actual reduction in economic impacts would be generally proportional to the reduction in the number of angler trips corrected for any increase in fishing trip prices that may ensue following the exit of some vessels from the fishery.

Especially affected by vessel reductions would be the areas that have been identified as “major activity centers” to the extent that the excluded vessels have been operating out of these areas. For coastal areas in Alabama through Texas, Sutton et al. (1999) identified as major activity centers for charter vessels the following areas: South Padre Island, Port Aransas, and Galveston-Freeport in Texas; Grand Isle-Empire-Venice in Louisiana, Gulfport-Biloxi in Mississippi, and Orange Beach-Gulf Shores in Alabama. The corresponding major activity centers for party boats are: South Padre Island, Port Aransas, and Galveston-Freeport in Texas; and, Orange Beach-Gulf Shores in Alabama. Earlier studies (Ditton et al. 1989; Holland et al. 1992) identified the same areas, except Gulfport-Biloxi, as major activity centers for charter vessels and the same areas, except Orange Beach-Gulf Shores, as major activity centers for party boats. For coastal areas in Florida through North Carolina, Holland et al. (1999) found the following as major activity centers for charter vessels: Miami, Fort Lauderdale, Naples, Ft. Myers, Destin, Panama City-Panama City Beach, Pensacola, Key West, Marathon, and Islamorada in Florida; Brunswick, Savannah, and St. Simons Island in Georgia; Charleston, Hilton Head, Mt. Pleasant, and Murrells Inlet in South Carolina; and, Atlantic Beach, Hatteras, Moorehead City, and Oregon Inlet in North Carolina. The corresponding activity centers for headboats are: Miami, Clearwater, Ft. Myers, Destin, Panama City-Panama City Beach, Islamorada, Key West, and Marathon in Florida; Savannah in Georgia; Little River, Mt. Pleasant, and Murrells Inlet in South Carolina; and, Atlantic Beach, Carolina Beach, and Swansboro in North Carolina. Two earlier studies (Ditton et al. 1992; Holland et al. 1992) identified as major activity centers for charter vessels the following areas in Florida: the Keys, Marco Island, Naples, Fort Myers, Madeira Beach, Clearwater, and St. Petersburg. The corresponding activity centers for headboats in Florida were: Key West, Islamorada, Naples, Fort Myers Beach, Boca Grande, Clearwater, Panama City/Panama City Beach, Destin, and Pensacola in Florida.

## **Environmental Consequences**

*Essential Fish Habitat (EFH):* Alternatives that result in increases in numbers of vessels have the potential to adversely affect EFH in some areas of the Gulf EEZ through increases in anchor damage to live bottom organisms.

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<sup>6</sup>It should be noted here that the estimated economic impacts only considered the revenues received by charter vessels and headboats. Other sources of economic activity, such as lodging and restaurant expenses by anglers were not included. In addition, the Gulf Council’s AP noted that gross revenues reported in the survey were understated, implying that the economic impacts could potentially be higher than reported above.

*Physical Environment:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. It would allow the Council the time necessary to develop a more comprehensive effort limitation program designed to help restore overfished stocks. However, several of the proposed alternatives (i.e. provisions for historical captains, vessels under construction prior to the March 29, 2001, control date) could increase the number of vessels in the recreational for-hire fisheries. These additional vessels could have the potential to adversely affect the physical environment in some areas of the Gulf EEZ through increased anchor damage to live bottom habitats. However, only a minimal number of new vessels are expected to enter the recreational for-hire fisheries under these provisions. Therefore, the impact to the physical environment is not expected to be substantial.

*Human Environment:* The Proposed Alternatives typically are less restrictive than many of the alternatives considered and not selected. Some of those alternatives while resulting in fewer permitted vessels would have excluded vessels that were actually fishing but were doing so without a permit. The Council, while recognizing the date 03/29/01 is potentially less restrictive, does feel that it caps the number of vessels at a level that was participating in the fishery; therefore, it should stabilize the number of vessels for the duration of the moratorium. Alternative C-4 creates a Class 1 permit endorsement that is transferable (see Alternative D-5) to other persons. That provides the opportunity for persons holding the Class 1 permit endorsement to sell it to another person who wishes to enter the fishery, thereby gaining a windfall profit. It also requires anyone entering the fishery during the moratorium period to purchase such a permit endorsement. Alternative C-4, in addition to providing the Class 1 permit endorsement to all the participants who have been complying with the requirement for charter vessel permits, also provides the opportunity to other participants who have been operating without the permits to qualify for the Class 1 endorsement, provided they can demonstrate they have continuously been in the recreational and for-hire fisheries for at least 5 years. Alternative C-7 proposes to provide the Class 1 permit endorsement to persons who can demonstrate they began construction of a charter vessel prior to the control date (November 18, 1998). All other eligible participants, including qualifying historical captains, would get the non-transferable Class 2 permit endorsement, which must be surrendered to NMFS when they leave the fisheries. Alternative C-10, like Alternative C-1, would result in a greater number of persons obtaining permits, some of whom on the speculation that the permits will be valuable on transfer. This will likely greatly increase the number of vessels qualifying, thereby, making reduction of effort capacity more difficult unless it is followed by a limited access program to reduce the number of participants that qualified under the more liberal time periods.

*Fishery Resources:* The Proposed Alternative subsections (1), (2), and (3) are anticipated to have an initial neutral impact on reef fish and coastal migratory pelagic resources in that the alternatives would include largely all the current participants i.e., no change in fishing effort in terms of number of vessels. Other alternatives such as subsection (4) of Alternative C-4, and Alternative C-10 are anticipated to have an adverse impact on fishery resources by

allowing the number of permitted vessels (and thereby fishing effort) to increase to some extent.

*Effect on Other Fisheries:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. Additionally, moratoriums are in effect on the issuance of commercial fishing permits for reef fish, coastal migratory pelagics, and highly migratory species in the Gulf EEZ. These moratoria will prevent effort shifting into these fisheries by displaced recreational for-hire fishermen.

*Effect on Wetlands:* The alternatives for eligibility to fish in the EEZ are anticipated to have no impact on coastal wetlands, because they propose to only regulate fishing activities greater than three miles offshore.

#### **D. Permit And/or Endorsement Transfers During the Moratorium**

Although the Ditton and Loomis (1985) study of the Texas charter vessel industry and that of Ditton and Vize (1987) indicated only 48 percent of the original participants remained in business after 5 years and only 25 percent after 10 years. The more recent studies, Sutton et al (1999) and Holland et al (1999) found much greater stability in the industry (See discussion under economic impacts of Section 6.0 A). However, most likely many or most of the persons leaving the business sold these vessels to new entrants. Therefore, it is important to provide for transfer of permits during the moratorium.

**Proposed Alternative: All permits/endorsements will be fully transferable with or without the vessel but without any increase in the passenger capacity, as established by the U.S. Coast Guard safety certificate.**

Discussion: The Proposed Alternative for transfer of permits and endorsements is the same as proposed in Alternatives D-1 and D-2. It is also essentially the same as proposed by Mr. Fensom and Ms. Walker in Appendix A and B, respectively. The portion of the Proposed Alternative providing the permits can be transferred but without any increase in the passenger capacity is the same as Alternative E-4 and under Section E of Appendix A. It is also essentially the same as proposed by Ms. Walker under Section E of Appendix B. In order for NMFS to be able to monitor whether permits transferred are in compliance with the limitations on passenger capacity, vessel owners will be required to submit a copy of the U.S. Coast Guard Certificate of Inspection at the time they submit an application for the new charter vessel/headboat (for-hire) vessel permit as provided for under Section 6.0 B. If the applicant does not submit a certificate of inspection for his vessel with the permit application NMFS will list the vessel as an “uninspected vessel” or six passenger vessel. If the transfer is to another vessel the applicant for the transfer must submit to NMFS a U.S. Coast Guard Certificate of Inspection for the vessel to which the permit is being transferred. All transfers

of permits and endorsements must be registered with NMFS. Permits transferred to other persons may be sold with or without the vessel.

**Alternatives Considered and Not Selected:**

**Alternative D-1: Transfer of permits/endorsements between vessels owned by a permit holder is allowed.**

**Alternative D-2: Transfer of permits/endorsements between individuals is allowed with or without transfer of the vessel.**

**Alternative D-3: Transfer of permits/endorsements is prohibited for the first year.**

**Alternative D-4: Transfer of permits/endorsements is prohibited during the moratorium.**

**Alternative D-5: Endorsement Transfers During the Moratorium:**

- (1) Transfer of Permits with Class 1 endorsements between vessels owned by the endorsement holder is allowed.**
- (2) Transfer of Permits with Class 1 endorsements between individuals or other entities is allowed with or without transfer of the vessel.**
- (3) Permits with Class 2 endorsements will not be transferable from the original permit holder to another individual or entity, but are transferable between vessels owned by the endorsement holder as under Alternative E-4, i.e., without an increase in the number of passengers that can be legally carried.**

**NOTE:** All transfers of permits and endorsements must be registered with NMFS. In the event of a death of the permit holder, the estate will act in his/her behalf.

**Alternative D-6: The fishing history of the permit/endorsement may be transferred on sale or transfer to the new owner.**

**Discussion:** If either Alternatives D-3 or D-4 were selected there would be some permits retired by attrition through persons leaving the fishery. However, these alternatives would cause rather severe hardships on persons who need to replace their vessels to remain in the fishery and hardships on persons who wish to enter the fishery. Therefore, these alternatives, although limited in duration, appear to be more appropriate as part of a more comprehensive limited access system that may replace the moratorium. The Proposed Alternative and Alternative D-2 should be interpreted as allowing the permit holder to sell the permit being transferred (as has been the case under moratoriums established by the Council for commercial fisheries). This provides a way for new participants to enter the fishery as required under limited access systems; however, to enter the fishery they would have to purchase the permit.

Alternative D-5 provides for transfer of Class 1 and Class 2 endorsements. Under Sections (1) and (2) the transfers for Class 1 endorsements are the same as the Council's Alternatives D-1 and D-2, i.e., between individuals and between vessels owned by the permit holder. Section (3) and Alternative E-4 provide that Class 2 endorsements may only be transferred between uninspected vessels (6 passengers or less) and between inspected vessels of the same or less passenger certification, but not between uninspected and inspected vessels. Class 2 endorsements are not transferable to another person, but revert back to NMFS when the permit holder leaves the fishery. Therefore, over time, this measure would reduce fishing effort through attrition.

Alternative D-6 provides when a permit/endorsement is transferred to a new owner the fishing history of the vessel, or several subsequent vessels under the same permit, is transferred to the new owner. The fishing history may consist of business records of the number of days of operation per year, fishing logs maintained by the captains, fishing survey information provided to Federal or state agencies or provided under the provisions of Section 7.0 of this amendment. Such records may be of use to the new owner if a limited access program is subsequently implemented.

Biological Impacts: The Proposed Alternatives and Subsections (1) and (2) of Alternative D-5 will have a neutral or no impact on the fishery resources. These alternatives would allow the transference of endorsements between vessels or owners with or without the vessels. This would result in no increase in fishing mortality rates on stressed stocks targeted by the recreational for-hire fisheries. Additionally, Subsection (3) of Alternative D-5 should have a beneficial biological impact over time in that it will reduce fishing effort in terms of vessels participating through attrition. Alternatives D-1 and D-2 could potentially allow fishing effort to expand through increases in passenger capacity and would have a negative biological impact on the fishery resources. Alternative D-3 and D-4 would also have a beneficial biological impact by reduction of effort immediately through attrition. Alternative D-6 has no biological effect as this alternative has no impact on fishing mortality rates by the recreational for-hire fisheries.

Economic Impacts: Commenting on an earlier license limitation program for the commercial red snapper fishery, the SEP (1996) noted that transferability facilitates the development of a market in which licenses are traded or leased. After the initial allocation of licenses, access to the fishery would be determined by market forces. Newcomers would buy or rent licenses to enter the fishery, and retirees would be paid to leave. Competition in the market for licenses ensures that those most willing or able to buy or lease licenses, usually the most efficient and profitable fishermen, would eventually acquire or lease them, whatever the initial distribution. To some extent, this comment has some merit when applied to permits during the moratorium. For an industry such as the for-hire sector which is characterized by a high turnover rate, transferability of permits assumes particular importance. It would allow the more efficient operators to remain or enter the fishery while the less efficient ones would be compensated for leaving the fishery. Under this process, the price of permits would start to partly reflect the value of the underlying fishery resource. The limited duration of the moratorium, however, would restrict the capitalization of the

value of the fishery resources in the price of the permits. The negative aspect of imposing less restriction on the transfer of permits during the moratorium is the complexity it will introduce in designing certain types of controlled access system that would require landings history or participation for initial assignment of fishing privileges.

Under the circumstance described above, Alternative D-4 would be the least beneficial, followed by Alternative D-3. In the same manner, Alternative D-5(3), which restricts the transferability of Class 2 licenses, may be adjudged less beneficial to the fishery. Conversely, the Proposed Alternative, Alternative D-5(1 and 2), Alternative D-1, and Alternative D-2 may be adjudged more beneficial than others. To some extent, Alternative D-6 may be considered to generate more economic benefits than those alternatives that prohibit permit/endorsement transfers. This is particularly so because this alternative simplifies the accounting of who is eligible and at what level of participation in the event a comprehensive controlled access system for the for-hire fishery is implemented.

Of the alternatives that allow transfer, Alternative D-2 appears to be superior to the others because it imposes no restriction in transfer and thus would allow the market for permits to develop. The only negative feature of the Proposed Alternative is the restriction imposed on passenger capacity, since this would limit the ability of operators to choose the most efficient level of operation.

Although transferability allows achievement of more efficient operations in the for-hire fishery, there are certain qualifications that need to be recognized. If permit transfer is not allowed as in Alternative D-4, there is a good possibility that the number of vessels would decrease during the moratorium. This would be the case if the findings of a relatively high turnover rate among Texas charter boats apply throughout the range of charter vessels affected by the moratorium. A substantial reduction in the number of charter vessels could ease the fishing effort expended by this sector, and as a consequence would improve the financial operations of the remaining vessels. If, in addition, the reduction in charter fishing effort were not offset by an increase in effort from other segments of the recreational fishery, the fish stocks would be given some protection so that rebuilding of some depressed stocks could accelerate. The net effect of this vessel reduction is not necessarily positive for the entire recreational fishery. For one, angler consumer surplus could decrease if the number of charter trips become limited and/or the fishing trip prices increase. Also, fishing effort from other segments of the fishery could increase and thus offset or even outweigh effort reduction in for-hire fishery. In addition, a reduction in the number of vessels entails reductions in economic activities, particularly in major activity centers for-hire vessels.

Given the scenario of a relatively more efficient fishery when permit transferability is allowed and the potential for fishing effort to not decrease with permit transferability, it would appear that the Proposed Alternative would provide a balance between allowing the fishery to be more efficient and limiting effort expansion. In this sense, the Proposed Alternative may be as beneficial, if not more, as Alternative D-2.

## **Environmental Consequences**

*Essential Fish Habitat (EFH):* The Proposed Alternative and alternatives D-1, D-2, and D-5(1) and (2) should have no impact on EFH because the number of vessels fishing does not change. Comparatively, Alternatives D-3, D-4, and D-5 (3) should have a beneficial effect as they reduce the number of vessels.

*Physical Environment:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. It would allow the Council the time necessary to develop a more comprehensive effort limitation program designed to help restore overfished stocks. The affected fishery is prosecuted with hook-and-line gear. This proposed amendment is not expected to alter existing fishing practices in the recreational for-hire sector of the fishery. Therefore, fishing activities conducted under this proposed alternative would have no adverse impacts on the physical environment.

*Human Environment:* The Proposed Alternative, Alternatives D-1 and D-2, and Subsections (1) and (2) of Alternative D-5 should have a beneficial impact on the human environment, by allowing persons to transfer permits and endorsements between persons by selling them, which would create a windfall profit. However, the value of such permit and endorsements would probably not be high over the duration of the moratorium (i.e., 3 years). Subsection (3) of Alternative D-5 making Class 2 endorsements non-transferable would have an adverse economic impact in comparison to Subsection (2) and no impact in comparison to Alternative D-4. Should a limited access program be implemented in the future Alternative D-6 has a beneficial effect.

The Proposed Alternative and Alternative D-2 also provides a beneficial impact to non-participants by providing them a way to enter the fisheries. It also will provide a monetary benefit to the permit holders who may sell their permits. The value of such permits is anticipated to increase over time, but probably not significantly over the proposed duration of the moratorium (i.e., 3 years). Alternative D-4 would have a major adverse economic impact on the participants, especially considering the relatively high rate of persons leaving the fisheries as documented by Ditton and Loomis (1985) and Ditton and Vize (1987). Alternative D-4 is also anticipated to have an adverse impact on the current participants who would be unable to replace their vessels.

*Fishery Resources:* The Proposed Alternative and Subsection (1) and (2) of Alternative D-5 would have a neutral impact on the reef fish and coastal migratory pelagics resources. Subsection (3) of Alternative D-5 and Alternatives D-3 and D-4 would have a beneficial effect on the fishery resources because the number of vessels would decline through attrition without provisions allowing transfer, thereby reducing fishing effort.

*Effect on Other Fisheries:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. Additionally, moratoriums are in effect on the issuance of commercial fishing permits for reef fish, coastal migratory pelagics, and highly migratory species in the Gulf EEZ. These moratoria will prevent effort shifting into these fisheries by displaced recreational for-hire fishermen.

*Effect on Wetlands:* The alternatives for permit and endorsement transfer are anticipated to have no impact on coastal wetlands, because they propose to only regulate fishing activities greater than three miles offshore.

#### **E. Vessel Passenger Restrictions on Permit Transfers**

**Proposed Alternative: All permits/endorsements will be fully transferable with or without the vessel but without any increase in the passenger capacity, as established by the U.S. Coast Guard safety certificate.**

NOTE: If a vessel fails the safety inspection for the higher passenger capacity and thereby reverts to the six-pack classification, it can have the higher passenger capacity restored when the deficiency is corrected and the vessel passes the safety inspection, and a copy of the certificate of inspection is submitted to NMFS.

Discussion: The Proposed Alternative for transfer of permits and endorsements is the same as proposed in Alternatives D-1 and D-2. It is also essentially the same as proposed by Mr. Fensom and Ms. Walker in Appendix A and B, respectively. The portion of the Proposed Alternative providing the permits can be transferred but without any increase in the passenger capacity is the same as Alternative E-4 and under Section E of Appendix A. It is also essentially the same as proposed by Ms. Walker under Section E of Appendix B. In order for NMFS to be able to monitor whether permits transferred are in compliance with the limitations on passenger capacity, vessel owners will be required to submit a copy of the U.S. Coast Guard Certificate of Inspection at the time they submit an application for the new charter vessel/headboat (for-hire) vessel permit as provided for under Section 6.0 B. If the applicant does not submit a certificate of inspection for his vessel with the permit application NMFS will list the vessel as an “uninspected vessel” or six passenger vessel. If the transfer is to another vessel the applicant for the transfer must submit to NMFS a U.S. Coast Guard Certificate of Inspection for the vessel to which the permit is being transferred. All transfers of permits and endorsements must be registered with NMFS. Permits transferred to other persons may be sold with or without the vessel.

#### **Alternatives Considered and Not Selected:**

**Alternative E-1: Transfer of permits between vessels is allowed without regard to vessel size or U.S. Coast Guard safety certification.**

**Alternative E-2: No transfers are allowed between different classes of vessels as certified by the U.S. Coast Guard to safely carry specific numbers of passengers.**

**Alternative E-3: A person with an uninspected vessel (i.e., limited to carrying no more than 6 passengers) can upgrade that vessel in terms of passenger capacity by having a U.S. Coast Guard safety inspection and certification of the vessel's passenger capacity. NMFS must be notified of this change.**

**Alternative E-4: Transfer of permits is allowed between vessels but without any increase in the number of passengers that can legally be carried under the U.S. Coast Guard safety certification, i.e., can be transferred to vessels certified to carry equal or fewer passengers.**

**Alternative E-5: There will be only two classes of charter vessels: (1) six-pack or uninspected vessels; and (2) inspected vessels with U.S. Coast Guard Certificate of Inspection. Transfer of permits is allowed within each of these classes, but not between classes.**

Discussion: Under U.S. Coast Guard (USCG) regulations persons licensed to carry more than 6 passengers for-hire and who will carry more than 6 persons must have their vessels certified by the USCG as to the number of passengers the vessel can safely carry. Vessels that carry 6 persons or less are not required to be inspected. Alternatives E-2 and E-4 are included to provide options that would prevent, for example, a transferred six-pack vessel permit from being used on a headboat. Alternative E-2 would prevent transfers between vessels with USCG certification to safely carry different levels of passengers. Preferred Alternative E-4 would allow only transfers that would not increase the capacity to carry passengers. Both alternatives are intended to prevent effort from increasing in terms of angler days.

Biological Impacts: There would be a biological benefit from preventing fishing capacity and thereby effort from increasing. However, information presented in Table 1 and Sections 1.0 and 6.0 indicate there have been historic trends in the industry resulting in fewer multi-passenger headboats that target reef fish. Effort in the troll fishery for coastal migratory pelagic species is limited by the number of lines that can be trolled, not the passenger certification.

Economic Impacts: Imposing transfer restrictions based on number of passengers would tend to limit the expansion of fishing effort, but it would also negate part of the benefits from allowing transfers of permits during the moratorium. For vessels operating out of Alabama through Texas, the average length is 39 feet for charter vessels and 72 feet for party boats (Sutton et al. 1999); for Florida the average lengths are 39 feet for charter vessels and 62 feet; for Georgia, South Carolina, and North Carolina the average lengths for charter vessels are 29 feet, 28 feet, and 38 feet, respectively; and, for South Carolina and North Carolina combined, the average headboat length is 63 feet (Holland et al. 1999). The tables below present more details on the variations in vessel lengths for charter vessels and party boats.

**Number and percent of charter boats by boat length  
(Alabama - Texas)**

Boat Length (feet)	Alabama		Louisiana		Mississippi		Texas		Total	
	n	%	n	%	n	%	n	%	n	%
25 or less	1	4.5	0	0.0	0	0.0	6	13.0	7	7.3
26-35	1	4.5	4	33.3	6	37.5	22	47.8	33	34.4
36-45	10	45.5	3	25.0	6	37.5	11	23.9	30	31.3
46-55	6	27.3	3	25.0	2	12.5	6	13.0	17	17.8
56 or more	4	18.2	2	16.7	2	12.5	1	2.2	9	9.4
Total	22	100.0	12	100.0	16	100.0	46	99.9	96	100.2
Mean	45.6		42.9		40.8		34.6		39.2	
Std. Dev.	10.7		13.7		11.5		8.8		11.2	

Source: Sutton et al. (1999).

**Number and percent of party boats by boat length  
(Alabama - Texas)**

Boat Length (feet)	n	%
60 or less	3	15.0
61-90	15	75.0
91 or more	2	10.0
Total	20	100.0
Mean	71.6	
Standard Deviation	17.1	

Source: Sutton et al. (1999).

**Number and percent of charter boats by boat length**

	Florida Charter Boats	
	n	%
25 or less	52	17.2
26-35	91	30.1
36-45	94	31.1
46-55	59	19.5
56 or more	6	1.9
Total	302	99.8
Mean	39.40	
Standard Deviation	13.88	

Source: Holland et al. (1999 ).

**Number and percent of headboats by boat length  
(Florida)**

Boat Length (feet)	n	%
60 or less	16	43.2
61-90	19	51.4
91 or more	2	5.4
Total	37	100.0
Mean	62.5	
Standard Deviation	16.6	

Source: Holland et al. (1999 ).

The tables above show that most of the charter vessels from North Carolina through Texas are in the 26 to 35 feet and 36 to 45 feet categories. Headboats, on the other hand, are mostly in the 61 to 90 feet category. If effort is considered to be highly correlated with vessel length, it would appear that permit transfers within the charter vessel or headboat classes would not appreciably change effort. A substantial change in effort is likely to occur mainly in permit transfers between charter vessels and headboats. Any alternative, then, such as the Proposed Alternative and Alternative E-2, that would limit permit transfer based on vessel length within charter vessels or headboats may constrain the achievement of efficiency in the charter vessel or headboat segments of the for-hire fishery, and thus adjudged less beneficial than those alternatives, such as Alternative E-1, that impose no such restriction.

The general conclusion above may have to be tempered with the possibility that vessel length may not be closely correlated with passenger capacity. Regarding passenger capacity, the tables below are presented to provide some insights regarding the potential shift in vessel capacity under a moratorium.

**Number and percent of charter boats by maximum capacity  
(Alabama - Texas)**

Passenger Capacity	Alabama		Louisiana		Mississippi		Texas		Total	
	n	%	n	%	n	%	n	%	n	%
10 or fewer	11	50.0	8	66.7	13	81.3	38	82.6	70	72.9
11-20	6	27.3	1	8.3	0	0.0	4	8.7	11	11.5
21 or more	5	22.7	3	25.0	3	18.8	4	8.7	15	15.6
Total	22	100.0	12	100.0	16	100.1	46	100.0	96	100.0
Mean	15.2		13.6		11.9		9.1		11.5	
Standard Deviation	12.8		12.1		13.8		8.9		11.3	

Source: Sutton et al. (1999).

**Number and percent of party boats by maximum capacity  
(Alabama - Texas)**

Passenger Capacity	n	%
40 or fewer	4	19.0
41-80	12	57.1
81 or more	5	23.8
Total	21	99.9
Mean	59.9	
Standard Deviation	24.2	

Source: Sutton et al. (1999).

**Number and percent of charter boats by maximum number of passengers that can be taken on boat  
(Florida)**

Passenger Capacity	Atlantic		Gulf		Keys		Florida Total	
	n	%	n	%	n	%	n	%
1-6	86	100.0	124	80.5	63	100.0	273	90.1
7-10	0	0.0	6	3.9	0	0.0	6	2.0
11-20	0	0.0	15	9.7	0	0.0	15	5.0
21-35	0	0.0	7	4.5	0	0.0	7	2.3
36-50	0	0.0	1	0.6	0	0.0	1	3.0
51-75	0	0.0	1	0.6	0	0.0	1	3.0
Total	86	100.0	154	100.0	63	100.0	303	100.0
Mean	5.83		8.46		5.87		7.17	
Standard Deviation	0.64		6.91		0.49		5.1	

Source: Holland et al. (1999 ).

**Number and percent of headboats by maximum number of passengers that can be taken on boat  
(Florida)**

Passenger Capacity	n	%
< 10	0	0.0
11-20	1	2.7
21-35	6	16.2
36-50	17	45.9
51-75	3	8.1
76-100	5	13.5
101-150	5	13.5
Total	37	100.0
Mean	61.35	
Standard Deviation	34.89	

Source: Holland et al. (1999 ).

**Number and percent of charter boats by maximum capacity  
(Georgia - North Carolina)**

Passenger Capacity	North Carolina		South Carolina		Georgia		Total	
	n	%	n	%	n	%	n	%
3	0	0.0	6	20.7	0	0.0	6	6.1
4	0	0.0	4	13.8	2	6.7	6	6.1
6	37	92.5	19	65.5	25	83.3	81	81.8
8	3	7.5	0	0.0	3	10.0	6	6.1
Total	40	100.0	29	100.0	30	100.0	99	100.0

Source: Holland et al. (1999 ).

**Number and percent of headboats by maximum capacity  
(South Carolina - North Carolina)**

Passenger Capacity	n	%
12	4	26.7
15	1	6.7
32	1	6.7
42	2	13.3
86	2	13.3
95	2	13.3
115	1	6.7
150	2	13.3
Total	15	100.0
Mean	63.7	
Standard Deviation	50.4	

Source: Holland et al. (1999 ).

The tables above show that most of the charter vessels from North Carolina through Texas are concentrated around the lower passenger capacity category. This condition offers a possibility that during the moratorium, a shift to larger capacity vessels may occur in order

to accommodate fishing trips that otherwise would have gone to those that would be excluded from the fishery by the moratorium. Imposing restrictions on the transfer of permits based on passenger capacity (Proposed Alternative, Alternatives E-2, E-3, and E-4) may then impose some control on the expansion of fishing effort. To the extent that passenger capacity is closely correlated with vessel length, imposing restrictions on the transfer of permits based on vessel length may limit the increase in fishing effort.

The case for headboats is different from that of the charter vessels, because most of the vessels are concentrated around the middle of the passenger capacity distribution, with the possible exception of vessels in the Carolinas which are concentrated in the lower passenger capacity category. Restrictions on permit transfer within the headboat fishery based on passenger capacity is likely to effect a relatively small impact on fishing effort.

### **Environmental Consequences**

*Essential Fish Habitat (EFH):* The alternatives allowing or prohibiting increases in passenger capacity should have no impact on EFH, since the number of vessels will not change.

*Physical Environment:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. It would allow the Council the time necessary to develop a more comprehensive effort limitation program designed to help restore overfished stocks. The affected fishery is prosecuted with hook-and-line gear. The proposed alternative is not expected to alter existing fishing practices in the recreational for-hire sector of the fishery. Therefore, fishing activities conducted under this proposed alternative would have no adverse impacts on the physical environment.

*Human Environment:* The Proposed Alternative, Alternative E-2, Alternative E-4, and Alternative E-5 attempt to maintain the status quo in terms of passenger capacity of vessels to which permits are transferred. These alternatives may, on occasion, deny a market opportunity for sale of a permit. Alternative E-1 and Alternative E-3 would enhance these market opportunities.

*Fishery Resources:* Alternative E-1 is anticipated to have an adverse impact on reef fish and coastal migratory pelagic resources as compared to the other alternatives which limit increases in fishing effort capacity. Currently the status quo is the same as E-1, i.e., no control over change of vessel passenger capacity.

*Effect on Other Fisheries:* Alternative E-1, Alternative E-3, Alternative E-4, and E-5 would not have an adverse impact on other fisheries as they allow transfers of permits within the reef fish and coastal migratory fisheries which. This would reduce effort shifting into other non-moratorium fisheries. However, Alternative E-2 which prohibits transfer of permits

may have a negative biological impact by increasing effort in other non-moratorium fisheries. Further, the proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. Additionally, moratoriums are in effect on the issuance of commercial fishing permits for reef fish, coastal migratory pelagics, and highly migratory species in the Gulf EEZ. These moratoria will prevent effort shifting into these fisheries by displaced recreational for-hire fishermen.

*Effect on the Wetlands:* The alternatives regulating the number of passengers fishing aboard vessels in the EEZ should have no impact on coastal wetlands, because they propose to only regulate fishing activities greater than three miles offshore.

#### **F. Annual Re-issuance of Permits Not Renewed (Or Permanently Revoked)**

NOTE: This section applies only to the Gulf permits which may have endorsements. Such endorsements would be subject to re-issuance along with the permit.

**Proposed Alternative: Permits not renewed within one year of their expiration (or permanently revoked) will not be reissued by NMFS during the moratorium.**

Discussion: Under the Proposed Alternative the number of vessels permitted to fish is expected to slightly decline during the period of the moratorium. The number of commercial reef fish vessel permits declined from about 2,200 in 1993 to about 1,230, through non-renewal of permits. However, a large portion of the 2,200 permits were initially obtained by persons who speculated the permits would have value, and up to 600 of the currently permitted vessels have no record of reef fish landings in some years. The reduction in number of vessels in these charter vessel/headboat fisheries through non-renewal of permits is unlikely to be nearly as high.

#### **Alternatives Considered and Not Selected:**

**Alternative F-1: Permits not renewed within one year of their expiration will be reissued by NMFS:**

- (a) By randomly selecting from an annual list of interested persons, or**
- (b) On a sequential basis to persons on a continuous waiting list, or**
- (c) Only 50 percent of permits not renewed each calendar year will be reissued as in (a) or (b) above.**

**Alternative F-2: Each calendar year fifty percent of permits not renewed within one year of their expiration will be re-issued by randomly selecting:**

- (a) persons excluded from the fisheries who can document that they owned and operated a charter vessel or headboat prior to the control date, but did not obtain a Federal permit, or**
- (b) persons who can document that they have been an operator of a charter vessel or headboat for 10 years.**

Discussion: Alternative F-1 provides that all or 50 percent of permits not renewed would be reissued by either random drawing or in sequence to persons on a waiting list. Such a list used for the random drawing would be established each calendar year, with the list used for the previous random drawing discarded.

Alternative F-2 would provide preferential treatment for either persons owning and operating vessels prior to the control date who were excluded by the moratorium or persons who have been operators of other persons' boats for 10 or more years. Extending preferential treatment to either of these groups seems justifiable in that both have been historical participants in the fisheries. While some of the owner/operators may have blatantly ignored the permitting requirement because enforcement was lax; others were probably not aware of the requirement. It would be very difficult operators to enter the fisheries if they must purchase both the permit and a vessel.

Biological Impacts: The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. Alternative F-1 and Alternative F-2 under the proposed renewals process could allow additional participants to enter the fishery. This could have an adverse biological impact on the resource by increasing fishing mortality rates on some stressed stocks targeted by the recreational for-hire fisheries.

Economic Impacts: Under the moratorium, for-hire vessel permits would assume some value above the fee charged by NMFS for permits, since no new entrants can participate in the fishery without obtaining the permit from those that already have them. In principle then, it can be expected that most permits existing at the start of the moratorium would remain in the fishery. But in practice, there is the possibility that the moratorium in the for-hire sector may be similar in its effects on the number of permits to those of the moratorium in the commercial reef fish permit.

The commercial reef fish permit moratorium has been in existence since 1992. As has been noted elsewhere in this document, commercial reef fish permits decreased 44 percent from their high of 2,200 in 1993 to about 1,230 currently. Indeed it may be recalled that a surge in the number of permits occurred right before the implementation of the moratorium, presumably many of which were secured for speculative purposes. A similar surge in permits is also observable in the for-hire fishery. The number of for-hire permits in Gulf coast states increased from about 940 on November 18, 1998 (original control date) to 1,650 in August 2000, and further to 2,226 (inclusive of vessels operating out of the east coast of

Florida) as of March 29, 2001. The last date is of course the cut-off date for initial participation in the proposed moratorium for the for-hire permits. Perhaps the one major difference between the commercial reef fish fishery and the for-hire fishery is that most of the new permittees are likely to be long-time participants in the for-hire fishery but did not secure the required permits for a variety of reasons, the main reason being that of lack of knowledge of existing permit requirement as can be gathered from public testimonies in public hearings held around the Gulf states. Thus, while the for-hire permit moratorium may share the same characteristics as the commercial reef fish moratorium in terms of potential reduction in permits despite the fact that permits may acquire some value during the moratorium, it is likely that such reduction in permits may not be as pervasive in the for-hire fishery as it was in the commercial reef fish fishery.

Not reissuing permits that have not been renewed, as the case with the Proposed Alternative, would address some of the problems facing the for-hire industry related to the presence of too much competition. If the profitability of the entire industry increases as a result of exiting vessels, then the Preferred Alternative may be deemed the most beneficial among the alternatives. One may have to contend, though, with the possibility that some areas may experience reductions in economic activities. Highly susceptible to this possibility are the areas that have been identified as major activity centers for the for-hire fishery.

### **Environmental Consequences**

*Essential Fish Habitat (EFH):* The Proposed Alternative may have a slight beneficial impact on EFH by reduction in vessels over what would occur under other alternatives.

*Physical Environment:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. It would allow the Council the time necessary to develop a more comprehensive effort limitation program designed to help restore overfished stocks. The affected fishery is prosecuted with hook-and-line gear. This proposed amendment is not expected to alter existing fishing practices in the recreational for-hire sector of the fishery. However, the reduction in the number of vessels entering the recreational for-hire fisheries through non-renewal or revoked permits (Proposed Alternative), may have a beneficial impact on the physical environment versus the alternatives that would allow for permit expansion. The possible reduction in the number of permits would lessen the impacts of increased anchorage damage on benthic habitats. Alternative F-1 and Alternative F-2 under the proposed renewals process could allow additional participants to enter the fishery. This could have an adverse impact on the physical environment by increasing the number of vessels in the fishery with subsequent damage to the benthic environment as a result of the aforementioned anchoring activities.

*Human Environment:* The Proposed Alternative would have a beneficial impact on the participants remaining in the fisheries because there would be a slight reduction in competition as permits declined through non-renewal. Alternative F-1 would nullify or reduce that benefit, as would Alternative F-2. Alternative F-2 provides a portal of entry for (a) persons excluded from the fishery when the amendment is implemented because they failed to obtain a permit and (b) for charter vessel operators with 10 or more years of service.

*Fishery Resources:* The proposed alternative would have a beneficial impact on the fishery resources through a reduction in fishing effort that results from the decline in permitted vessels whose permits are not renewed or are permanently revoked.

*Effect on Other Fisheries:* The proposed alternative, which reduces the number of permits in the recreational for-hire fisheries may have a negative effect on other fisheries by effort displacement of recreational fishermen into these fisheries. Alternatives F-1 and F-2 may benefit other sectors of the recreational fishery by allowing moratorium permits in the recreational for-hire sector to be reissued thus reducing effort shifting into non-moratorium fisheries.

*Effect on Wetlands:* The alternatives are anticipated to have no impact on coastal wetlands, because they propose to only regulate fishing activities greater than three miles offshore.

## **G. Appeals Process under the Moratorium**

At minimum an appeals process will be necessary to resolve disputes over the records used for persons to establish eligibility for a permit and/or endorsement to participate in the fisheries subject to this amendment. If hardships are also included the appeals process becomes much more complex.

Most likely the appeals board will consist of a designee for each of the state fishery directors, because these persons are authorized through cooperative agreements between NMFS and the states to handle confidential data (e.g., such as individual's income tax and other records). Under the appeals process the NMFS RA (or designee) will render the final decision on each case. The Appeals Board members will each individually summarize and submit their recommendations to the RA for each case. Persons submitting appeals must state their case in writing and submit it to the NMFS for distribution to the board before the appeal is scheduled. Upon request, a vessel owner or person affected may make a personal appearance before the Appeals Board. The Board will conduct its review immediately following implementation of the moratorium and will cease to exist on conclusion of the appeals hearings.

**Proposed Alternative: Individuals or Corporations can appeal to the RA to resolve issues related to the NMFS permit office records that pertain to initial eligibility.**

**NOTE:** A vessel owner may request an appeal of the NMFS RA's determination regarding initial permit/endorsement eligibility by submitting a written request for reconsideration to the RA. Such request must be postmarked or hand-delivered within 30 days of the date of the RA's notification denying initial permit/endorsement issuance and must provide written

documentation supporting permit/endorsement eligibility. (See structure of the appeals process under Section G.)

**Alternatives Considered and Not Selected:**

**Alternative G-1: Do not have an appeals process.**

**Alternative G-2: Create an appeals board that would individually make recommendations to the Regional Administrator (RA) for action resolving issues related to the NMFS permit office records that pertain to eligibility to retain or obtain a permit to participate in the fisheries.**

**Alternative G-3: The RA, after reviewing recommendations by the appeals board, may initially issue additional permits during the first year to persons currently in the fishery that can document, to the satisfaction of the RA, that they owned and operated a charter vessel or headboat prior to the control date, but did not obtain a Federal permit or to persons who contracted for the construction of a charter vessel or headboat prior to the control date of November 28, 1998.**

**Alternative G-4: Appeals Process during Moratorium will be developed to accommodate both hardships and data and/or record disputes between vessel owners and NMFS. The data and/or record disputes will be limited to dates of issue of original permit or permits, original USCG Certificates of inspection or proof of personal and/or shipyard construction of a for-hire fishing vessel. A person with a dispute related to data and/or records has 60 days to file an appeal with NMFS after being notified by NMFS that their records or data are insufficient for eligibility for an endorsement under Sections 6.0 C. A person with a hardship must file an appeal within 60 days of implementation of the final rule of this amendment.**

**Hardship Guidelines for G-4**

Since hardships are, by their nature, unique situations, the Council cannot predict all of the circumstances which would merit consideration. The Council emphasizes that hardship allotments are to be awarded on the basis of circumstances which were beyond an individual's control, as opposed to difficulties resulting from unfortunate business judgments. The following examples of meritorious circumstances are offered to aid the appeals board in its determinations whether to hear or review a case:

- a. A person who had entered into a binding contractual agreement for construction of a charter or head boat at a time other than provided under Alternative C-7 under Section 6.0 C, or
- b. A person who had entered into a binding contractual agreement to purchase a vessel that would be ineligible to participate in the fishery under the eligibility criteria of Section 6.0 C, or

- c. A person who had his/her vessel permitted prior to the control date but ceased fishing the vessel prior to the eligibility dates in Section 6.0 C due to a documented health problem (physical or mental), and was thereby excluded from participating, or
- d. A person who had his/her vessel permitted prior to the control date who lost the vessel due to fire or sinking prior to the eligibility dates in Section 6.0 C, and was thereby excluded from participation.

These examples are not all inclusive and are given only to illustrate the type of situations resulting from circumstances beyond the control of the fisherman. The Council further instructs NMFS to require documentation or other proof of the claims made pursuant to this section.

**Alternative G-5: Do not include hardships in the appeals process.**

**Alternative G-6: Do not have an appeals process if Alternative C-10 is adopted. Alternative C-10 provides that persons obtaining a charter vessel permit from NMFS for reef fish or coastal migratory pelagics fisheries on or before January 1, 2002 would qualify for the new Gulf permit with fishing endorsements as proposed under Alternatives B-3 and B-6.**

### **Structure of the Appeals Process**

Once the amendment is implemented the NMFS Permit Branch can assign the new Gulf permit and appropriate endorsements based on the NMFS permit files to all persons whose records indicate they are eligible for endorsements under the Proposed Alternative Subsection (1) of Section 6.0 C. However, all other persons must submit some type of specific records to establish their eligibility under Subsection (2) and (3) of the Proposed Alternative of Section 6.0 C along with an application for the permit and appropriate endorsements within 90 days of the effective date of the final rule for this amendment.

Upon receipt of these applications and copies of records, NMFS personnel will issue the appropriate vessel permit with endorsements to all persons whose records demonstrate they have met the eligibility criteria. In cases where the records are not adequate to establish eligibility the RA (or his designee) will provide the applicant with written notification denying initial permit/endorsement issuance and returning his/her application and records, citing the deficiency of the records.

A vessel owner may request an appeal of the NMFS RA's determination regarding initial permit/endorsement eligibility by submitting a written request for reconsideration to the RA with copies of the appropriate records for establishing eligibility. Such request must be postmarked or hand-delivered within 30 days of the date of the RA's notification denying initial permit/endorsement issuance. The vessel owner may request an oral hearing.

The RA may appoint one or more appellate officers to review the appeals and recommend to the RA, based on the written record, that (1) the appeal be denied, (2) the appeal be granted, or (3) the request for oral hearing be granted or denied. Should the RA concur with the appellate officers on (1) or (2) the applicant will be immediately notified. Should the RA concur with (3) granting an oral hearing before the appellate officer(s) the applicant will be so notified. The actions of the appellate officer(s) and RA will be taken within 30 days after the written appeal is received by NMFS.

Provided that an oral hearing before the appellate officer(s) is granted, the RA will notify the applicant of the place and date of the hearing, providing the applicant 30 days to provide supplementary evidence along with his/her written response.

Discussion: If the Council selects a preferred alternative that allows consideration of hardship cases, the RA will provide the written appeals to the Appeals Board who will be convened to review them and make individual recommendations to the RA whether the appeals should be granted or the Appeals Board should schedule and hear oral testimony on the appeal. The decision of the RA will be final.

The Appeals Board will consist of a state employee appointed by each of the five principal state officials serving as members of the Council. Such appointed state employees should be cleared to review confidential data under the cooperative statistical program between NMFS and the states. For administrative purposes relating to travel compensation, the Council shall treat the Appeals Board as an advisory panel. The Appeals Board will hold its hearings at several locations across the Gulf. The board members will provide their individual recommendations on each appeal to the RA who will make the final decisions and notify the applicants. The Appeals Board will cease to exist after initial eligibility for permits and/or endorsements had been determined.

Previously the Council utilized persons delegated by the state fishery directors as the appeals boards. This would seem to be the best way to proceed if an appeals board is created. Alternative G-3, in addition to allowing appeals by person operating in the fisheries prior to the control date, would allow consideration of granting a permit to a person who had contracted for construction of a vessel prior to the **control date** (i.e., November 18, 1998) and who had expended funds paying for that vessel.

The AP suggested Alternative G-4, which provides largely for an appeals process whereby persons with disputes related to records for eligibility to participate in the fishery with certain types of permits and/or endorsements may appeal an issue to a board that will individually advise the RA on resolution of the issue. The alternative does also include hardships, without specifying any detail on the types of hardships that should be considered. (The Hardship Guidelines for G-4 provide some tentative guidance.)

Alternative G-5 suggests the Council not include hardship provisions.

Alternative G-6 provides there will be no appeals process if Alternative C-10 is adopted. That is because Alternative C-10 provides a date almost a year in the future by which

persons can qualify for participation by obtaining the permits currently required by law to fish for reef fish or coastal migratory pelagics in the Gulf EEZ from charter vessels and other recreational for-hire vessels.

Biological Impacts: The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. However, alternatives under the appeals process that allow additional participants previously not in the fishery could have an adverse biological impact. New entrants into the fishery would increase fishing mortality rates on some stressed stocks targeted by the recreational for-hire fisheries.

Economic Impacts: The creation of an Appeals Board and the design of its structure would have minimal effects on economic efficiency, but do address the equity issue of the permit moratorium. One major reason for this is that an appeals board would only marginally affect the number of persons or vessels receiving permits. Economic changes would only become evident if the number of successful appeals were large compared to the number of qualifying persons or vessels. Given the new cut-off date of March 29, 2001, for initial inclusion in the moratorium, it is likely that successful appeals would be relatively few.

An appeals board does provide an avenue for fishermen to provide information related to their respective particular situations that were not available to fishery managers in their decision to exclude certain fishermen from continued participation in the for-hire fishery. It may be noted, though, that an Appeals Board created by the Council is only an advisory body to NMFS and the Commerce Secretary, and final decisions will still have to be made by the Commerce Secretary. Considering that the Council's decision to limit the scope of appeals to NMFS permit records for initial eligibility, submission of appeals directly to the RA would not limit the ability of the public to have their records set straight for initial eligibility purposes.

## **Environmental Consequences**

*Essential Fish Habitat (EFH):* The alternatives that result in an increased number of vessels may have a slight adverse impact on EFH.

*Physical Environment:* The alternatives should have no impact on the physical environment because they do not regulate fishing activity. To the extent that the lack of appeals results in fewer permits, those alternatives further restricting appeals may result in fewer permits which might equate to less gear in the fishery and less of an impact on the physical environment.

*Human Environment:* The Proposed Alternative and Alternatives G-2 and G-4 are principally related to the eligibility records that would apply under Section 6.0 C. It would provide persons excluded from the fishery a chance to submit information that would clarify some of NMFS' records for their vessels. However, Alternative G-4 also allows for filing

hardship cases, some example of which are set forth in the Hardship Guidelines for G-4. Alternative G-3 would allow issuing permits to persons whose vessel is in the fishery and can document the vessel was operating in the fishery prior to the control date or to persons who contracted for construction of a vessel prior to the control date of November 28, 1998. Alternative G-6 provides there will be no appeals process if Alternative C-10 is adopted. That is because Alternative C-10 provides a date almost a year in the future by which persons can qualify for participation by obtaining the permits currently required by law to fish for reef fish or coastal migratory pelagics in the Gulf EEZ from charter vessels and other recreational for-hire vessels.

*Fishery Resources:* To the extent that any of the alternatives result in an increase in the recreational for-hire vessels, the impact on the reef fish and coastal migratory pelagics resources will be progressively adverse depending on the amount of increase.

*Effect on Other Fisheries:* Alternative G-1 may have a negative effect on other fisheries by eliminating the appeals process which could result in effort shifting from the recreational for-hire sector into other non-permitted fisheries. Alternative G-2, Alternative G-3, and Alternative G-4 which allow for an appeals process, and the potential for issuing additional permits in the recreational for-hire sector, could have a positive impact on other non-moratorium fisheries by reducing effort shifting into these fisheries.

*Effect on Wetlands:* The alternatives should have no impact on coastal wetlands, because they propose to only regulate fishing activities greater than three miles offshore.

## **7.0 CHARTER VESSEL REPORTING AND PERMIT RENEWAL CONDITIONS**

If the Council elects to proceed with the moratorium, then it is an indication that during the moratorium period they will likely develop a more comprehensive limited access system for the reef fish and coastal migratory pelagic charter vessel/headboat fisheries. In order to consider some of the alternatives for limiting access it is very useful to have landings information for individual vessels (or permit holders). This section includes alternatives for that purpose.

### **7.1 Reporting**

**Proposed Alternative (1): An application for renewal will be required every two years. Permit renewal is contingent on compliance with the reporting requirements specified in proposed alternative 2 below.**

**Proposed Alternative (2): All vessels holding permits and/or endorsements will be included in an active sampling frame and, if selected, participate in one of the approved fishing data surveys. Surveys include, but are not limited to :**

- A: Charter Boat Telephone Survey**
- B: Beaufort Headboat Survey**
- C: Texas Parks & Wildlife Survey**

**D: Subsequently approved appropriate data collection system.**

NOTE: Participation means being identified in an active survey frame ( i.e., universe of captains or vessels from which persons are randomly selected report) and, if chosen, providing the requested information. Refusal to being identified in an active frame and/or to providing the required information will result in non-reissuance of permits and/or endorsements.

**Alternatives Considered and Not Selected:**

**Alternative 3: Require charter vessel logbooks.**

**Alternative 4: Status Quo - do not require logbooks or participation in the surveys.**

Discussion: Proposed Alternative 2 would require all vessels with the Gulf charter vessel permit, and endorsements to participate in one of the following surveys: (1) Charter Boat Telephone Survey, (2) TPWD Recreational Fishing Survey, (3) The NMFS Headboat Survey, (4) A data collection system that would replace one or more of these surveys under Gulf FIN. Participants means if the vessel is selected to report on these surveys the captain or operator must provide the information requested for the duration of the request. For the Charter Boat Telephone Survey, administered by GSMFC the randomly selected captain is asked to provide effort information on trips for only a few weeks. Under the NMFS headboat survey the captain or operator is required to provide catch and landings information for each trip. Proposed Alternative 2 provides if a vessel's owner or captain refuse or fail to participate the permit and/or endorsements will not be renewed the next permit year. Proposed Alternative 1 which provides the permits are active for a 2-year period is consistent with the current NMFS policy of issuing a commercial permit for a 1-year period, but allowing the permit holders an additional year to renew the permit by filing an application.

Alternative 3 provides for the use of charter vessel logbooks. NMFS opposed this alternative because of the cost of processing trip reports.

The survey methods focus on improving effort estimates of the current Marine Recreational Fishery Statistics Survey (MRFSS) methods since the catch estimates from the MRFSS appear to sufficiently represent catch by the charter vessel sector. The catch data are being collected under the auspices of RecFIN(SE) via a cooperative marine recreational data collection program (using MRFSS methods) with involvement from the Gulf states, GSMFC, and NMFS.

Lastly, participation in the charter vessel captain telephone survey provides the necessary data for stock assessments and fisheries management while imposing the least amount of burden to the industry since only 10 percent of vessels are sampled at any time as opposed to 100 percent reporting of all trips by all vessels in the headboat fishery.

David Donaldson, GSMFC, indicates that all vessels should be listed in their sampling frame at the time of implementation of the amendment, except those whose owners declined to participate in the pilot boat survey. Texas vessels are not currently in the sample frame but should be before mid-2001.

Biological Impacts: Beneficial biological impacts are anticipated from the reporting requirements of the Preferred Alternative, which should improve the reliability and precision of the stock assessments.

Economic Impacts: In general, data collection is an integral component of any management strategy, for it is through the collection and use of information that management can design better and more appropriate management system for the subject activity. In this regard, the for-hire fishery, especially that it has become an important component of the fishery in the Gulf and South Atlantic, is no different than other sectors of the fishery. Currently, headboats are required to submit logbooks, but no similar requirement applies to charter vessels. Fishery information on charter fishing activities are collected as part of the MRFSS.

Given the broad coverage that a logbook system offers in data collection, Alternative 3 may be considered the better approach. But Alternative 3 is not incompatible with Proposed Alternative 2 so that both alternatives may be employed, possibly providing a better data set than either alternative can provide. Logbooks, however, being generally dependent on vessel operator reporting may be subject to some level of inaccuracies due to a variety of reasons, such as recall problems and lack of time for completing and mailing logbooks. When the two approaches are used, logbook reports would provide a more complete data set whose level of accuracy may be checked from information collected through Proposed Alternative 2. In the event that the moratorium is transformed into a controlled access system of a type similar to an individual fisherman's quota, logbook information would assume a critical role in assigning initial fishing privileges. Other data collection system that would not be as broad in coverage as logbooks would be seriously wanting in providing fishery managers the needed information.

Naturally, there are costs involved in adopting Proposed Alternative 2 and/or Alternative 3. NMFS has estimated that logbook reporting would demand about 7,000 hours per year of industry time. At an opportunity cost of \$12.50 per hour, total industry cost from logbook reporting would amount to \$87,500 annually. Although this amount is relatively small for the industry as a whole, smaller charter vessel operations would disproportionately share a larger burden. Under Proposed Alternative 2, the public burden is substantially less as only a fraction of the population is required to actually participate in data collection.

### **Environmental Consequences**

*Essential Fish Habitat (EFH):* The area affected by the proposed alternatives in the Reef Fish and Coastal Migratory Pelagic fisheries has been identified as EFH for the Red Drum, Reef Fish, Shrimp, Stone Crab, and Coral FMPs of the Gulf Council; Coastal Migratory Pelagics and Spiny Lobster joint FMPs of the Gulf and South Atlantic Councils; and the

Tuna/Swordfish/Shark and Billfish FMPs of NMFS Highly Migratory Species. The actions are intended to conserve and enhance the stocks of reef fish and coastal migratory pelagic fishes by limiting overall fishing efforts in the fisheries. This proposed amendment is not expected to alter existing fishing practices in the recreational for-hire sector of the fishery, and in the context of the fisheries as a whole, will not have an adverse impact on EHF.

*Physical Environment:* The proposed amendment would moderate short-term future increases in fishing effort and attempt to stabilize fishing mortality rates in the for-hire sector of the recreational fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize fishing effort by limiting the number of vessels in the fishery. It would allow the Council the time necessary to develop a more comprehensive effort limitation program designed to help restore overfished stocks. The affected fishery is prosecuted with hook-and-line gear. This proposed amendment is not expected to alter existing fishing practices in the recreational for-hire sector of the fishery. Therefore, fishing activities conducted under these proposed alternatives would have no adverse impacts on the physical environment.

*Human Environment:* The impacts are in terms of burden hours for providing the information. Under Alternative 3 the time required to complete each logbook sheet would have been about 3 minutes. For each vessel to report each trip the total reporting burden would have been about 7,000 hours annually. Under Proposed Alternative 2 the time required for a vessel captain to respond to the telephone interview is about 5 minutes. Each captain selected would report 18 times annually. For 10 percent of the captains to participate the total reporting burden is estimated at 150 hours annually (David Donaldson, 1999, GSMFC, Personal Communication).

*Fishery Resources:* To the extent that either of the alternatives results in more reliable information than MRFSS the effect on the fishery resources will be beneficial.

*Effect on Other Fisheries:* Since information on harvest levels for other finfish stocks will be collected by both alternatives the effect is the same as described above under *Fishery Resources*.

*Effect on Wetlands:* The alternatives have no impact on wetlands, because the reporting requirements would only regulate fishing activities beyond three miles into the Gulf.

## **8.0 REGULATORY IMPACT REVIEW**

The following discussion contains all information previously provided in the original amendment and does not contain a description of the impacts associated with the corrected actions. A description and discussion of these impacts and determinations with regards to significance are provided in the supplemental Regulatory Impact Review and Regulatory Flexibility Act Analysis included as an attachment to this corrected amendment (Appendix 3).

## **8.1 Introduction**

The National Marine Fisheries Service requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: (1) it provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; (2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem; and (3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

The RIR also serves as the basis for determining whether any proposed regulations are a "significant regulatory action" under certain criteria provided in Executive Order 12866 and whether the proposed regulations will have a "significant economic impact on a substantial number of small business entities" in compliance with the Regulatory Flexibility Act of 1980 (RFA).

This RIR analyzes the probable impacts on fishery participants of the proposed plan amendment to the Reef Fish and Coastal Pelagics Management Plans.

## **8.2 Problems and Objectives**

The general problems and objectives are found in the Reef Fish FMP and Coastal Migratory Pelagics FMP, as amended, and Sections 3.0 and 4.0 of this document. The purpose and need for the present plan amendment are found in Section 3.0 of this document. The current plan amendment addresses the following issues: (1) establish a permit moratorium; and, (2) reporting requirements.

## **8.3 Methodology and Framework for Analysis**

This RIR assesses management measures from the standpoint of determining the resulting changes in costs and benefits to society. To the extent practicable, the net effects are stated in terms of producer surplus to the harvest sector, net profits to the intermediate sector, and consumer surplus to the final users of the resource.

In addition to changes in the surpluses mentioned above, there are public and private costs associated with the process of changing and enforcing regulations on the reef fish fishery. A simple estimation of these costs is made in this document.

Ideally, all these changes in costs and benefits need to be accounted for in assessing the net economic benefit from management of reef fish. The RIR attempts to determine these changes to the extent possible.

## 8.4 Impacts of Management Measures

The discussions under the “Economic Impacts” sub-heading in Sections 6 and 7 comprise the bulk of the impact analysis for RIR purposes. A summary of these impacts is developed in Subsection 8.6 below.

## 8.5 Public and Private Costs of Regulations

The preparation, implementation, enforcement, and monitoring of this or any Federal action involves the expenditure of public and private resources which can be expressed as costs associated with the regulations. Costs associated with this amendment include:

Council costs of document preparation, meetings, public hearings, and information dissemination .....	\$90,000
NMFS administrative costs of document preparation, meetings and review .....	60,000
Law enforcement costs .....	None
Public burden associated with permits and reporting requirements .....	20,000
NMFS costs associated with permits and reporting requirements .....	20,000
TOTAL .....	\$190,000

These costs pertain mainly to the initial implementation of this Amendment. There are additional public burden costs or NMFS costs associated with permitting and reporting requirements. The total initial reporting burden for permits is estimated at 420 hours and for surveying 10 percent of vessel captains, 150 hours annually. Each permit transfer is estimated to require 20 minutes and each survey of a vessel captain, 3 minutes. The proposed measures would entail additional enforcement costs, but under a fixed level of enforcement budget and personnel, a redirection of resources would have to be undertaken in order to conduct monitoring and enforcement activities necessitated by the actions in this amendment. While the government cost associated with permits is reduced by the same amount paid by the public, NMFS would still have to expend the money as permit fees go to the general treasury.

## 8.6 Summary of Economic Impacts

The moratorium alternatives have the potential to stabilize the for-hire fishery while the need for some form of controlled access is evaluated for the fishery. Both the 3-year and 5-year moratorium alternatives are not expected to adversely affect the average charter vessel or headboat operator, but more vessels may be expected to leave the fishery under a 5-year than

a 3-year moratorium. A very high percentage of charter vessel and headboat operators expressed confidence in remaining in business the next 3 years.

The selection of eligibility criteria for initial participation in the moratorium has limited effects on economic efficiency, but it assumes critical importance in determining the level of adverse impacts on regional economies, particularly in areas identified as major activity centers for charter vessels and headboats.

Imposing restrictions on the transfer of for-hire vessel permits during the moratorium would restrict the development of markets for licenses, thus potentially limiting the ability of more efficient operators to enter the fishery or improve their fishing operations.

The alternatives on the transfer of permits based on vessel length or passenger capacity may control the expansion of effort in the fishery during the moratorium, but they would also affect the development of a more economically efficient for-hire business operation. Among the alternatives considered for this purpose, passenger-based restrictions appear to offer a better chance of limiting effort expansion than vessel length-based alternatives.

If the non-issuance of permits not renewed increases the profitability of the for-hire industry, then retiring permits during moratorium would be the more economically preferred alternative.

The establishment of an Appeals Board has practically no bearing on economic efficiency to the extent that the number of successful appeals is substantially smaller than the number of permits issued at the start of the moratorium. With the proposed cut-off date of March 29, 2001, for initial eligibility, successful appeals are deemed to be few. An appeals board mainly provides fishermen an additional avenue to present more information that were not available to fishery managers during the allocation of initial for-hire permits. Considering that the Council has limited the scope of appeals to NMFS permit records, the Proposed Alternative, which would require submission of appeals directly to the RA, would not significantly affect the ability of the public to straighten their records for initial eligibility purposes.

Logbook reporting provides broader informational base than MRFSS-based data collection. The former, however, imposes more burden on fishermen, although the same burden has already been borne by headboats which are now currently subject to logbook reporting.

Making the submission of fishery information, either by logbooks or participation in the MRFSS, an important precondition for permit renewal would greatly aid in collecting needed information from for-hire vessel operators. The MRFSS-based approach poses equity problems related to the fact that this system exposes only a portion of the for-hire vessel operators to the risk of having their permits not renewed.

## **8.7 Determination of Significant Regulatory Action**

Pursuant to E.O. 12866, a regulation is considered a "significant regulatory action" if it: (1) has an annual effect on the economy of \$100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) creates a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The measures in this amendment may eventually reduce the number of vessels operating in the for-hire fishery in the Gulf and South Atlantic. Such reduction may reduce the financial value of some business operations but may also increase the profitability of the remaining business operations. While the two effects may not be offsetting, it is very likely that the combined effects would not exceed the \$100 million threshold on an annual basis.

Measures in this amendment do not interfere or create inconsistency with any action of another agency, including state fishing agencies. The proposed amendment is made applicable only to fishing operations of for-hire vessels in Federal waters, although the various states would be requested to make their rules applicable to fishing in state waters consistent with the provisions in this amendment. Also, measures in this amendment do not affect any entitlements, grants, user fees, or loan programs. The concept of a moratorium on permits as a management tool has been used in the Gulf and South Atlantic in previous actions of the Gulf and South Atlantic Councils, and thus is deemed not to raise novel legal and policy issues. Some amount of controversy may be expected of this amendment, particularly as it relates to the initial eligibility requirement for permits under the moratorium. The particular choice of March 29, 2001, which is relatively liberal compared to the original control date of November 18, 1998, as the cut-off date for initial eligibility does significantly tone down such controversy. In addition, appeals may be submitted to the RA in the event certain persons are initially denied permits.

The foregoing leads to the conclusion that this regulation if enacted would not constitute a "significant regulatory action."

## **8.8 Determination of the Need for an Initial Regulatory Flexibility Analysis**

### Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and

to explain the rationale for their actions to assure that such proposals are given serious consideration.

With certain exceptions, the RFA requires agencies to conduct an Initial Regulatory Flexibility Analysis (IRFA) for each proposed rule. The IRFA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. An IRFA is conducted to primarily determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." In addition to analyses conducted for the Regulatory Impact Review (RIR), the IRFA provides a description of the reasons why action by the agency is being considered; a succinct statement of the objectives of, and legal basis for, the proposed rule; a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; and, an identification, to the extent practicable, of all relevant Federal rules, which may duplicate, overlap, or conflict with the proposed rule.

Description of the reasons why action by the agency is being considered: The need and purpose of the actions are set forth in Section 3 of this document. This particular section is included herein by reference.

Statement of the objectives of, and legal basis for, the proposed rule: The objectives of this action are described in Section 3 of this document. This section is included herein by reference. The Magnuson-Stevens Fishery Conservation and Management Act, as amended, provides the legal basis for the rule.

Description and estimate of the number of small entities to which the proposed rule will apply: As of the control date of November 18, 1998, there were 940 for-hire vessels with home port in the five Gulf states, of which 723 had both reef fish and coastal migratory pelagic permits, 58 had only reef fish permits, and 159 had only coastal migratory pelagic permits. In August 2000, the number rose to 1,650 permitted for-hire vessels, of which 1,403 had both reef fish and coastal migratory pelagic charter permits, 112 had only reef fish charter permits, and 135 had only coastal migratory pelagic charter permits. As of the new cut-off date of March 29, 2001, the number rose to **2,226**<sup>7</sup> permitted for-hire vessels, of which **1,737** have both reef fish and coastal migratory pelagic charter permits, **123** have only reef fish charter permits, and **366** have only coastal migratory pelagic charter permits. While these vessels may be considered to comprise the universe of regulated for-hire vessels, potential additional vessels that may be affected by the moratorium can come from numerous guide boats now operating in state waters throughout the Gulf and for-hire vessels operating in adjacent areas such as the South Atlantic region. Additional descriptions of

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<sup>7</sup>This number should be treated at this time with caution. It does include vessels operating out of the east coast of Florida while the previous numbers do not.

small entities affected by the proposed rule are noted below in the discussion of the substantial number of small entities criterion.

Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records: Some of the preferred alternatives in this amendment impose additional reporting requirements. These requirements, which include such information as income of participants, record of past participation in the fishery, and proof of the time a vessel was under construction, are mostly related to eligibility for initial participation in the moratorium. These requirements do not require professional skills, and thus may be deemed not to be onerous on the affected participants.

Identification of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule: No duplicative Federal rules have been identified, since the proposed moratorium will be the first to affect the for-hire fishery in the Gulf and South Atlantic. Since the proposed moratorium applies only to the Gulf, this would differ from permitting systems of for-hire vessels in other areas, particularly the South Atlantic. This difference would be especially pronounced in Florida where the moratorium applies only in the west coast and not in the east coast of the state. To the extent that the South Atlantic Fishery Management Council is in the process of adopting a similar moratorium in its area of jurisdiction, particularly with respect to the coastal migratory pelagic for-hire fishery, the potential conflict in rules affecting the for-hire fishery in the Gulf versus the South Atlantic area of jurisdiction would be minimized. Also because a control date for entry into the for-hire fishery has been set by the Secretary of Commerce for highly migratory species, the proposed moratorium would complement such action, at least in the Gulf areas where highly migratory species are prosecuted by for-hire vessels.

#### Substantial Number of Small Entities Criterion

There are two general classes of small entities that would be directly affected by the proposed rule, namely, charter boats and headboats. The Small Business Administration (SBA) defines a small business in the charter vessel activity as a firm with receipts up to \$5 million per year. Sutton et al. (1999) estimated that the average annual receipts of charter vessels amount to about \$82,000 in Alabama, \$64,000 in Louisiana, \$52,000 in Mississippi, and 72,000 in Texas. The estimated average annual receipts for party boats in Alabama through Texas are approximately \$141,000. Sutton et al. (1999) commented that this number is likely to be severely understated, since nearly 70 percent of the sample respondents indicated gross revenues in the questionnaire's top category of \$150,000 or more annually. Also, the Council's Ad Hoc Charter Vessel/Head Boat Advisory Panel commented that the Sutton et al. survey probably underestimated the gross revenues and certain expenditures of for-hire vessels. Holland et al. (1999 ) reported that in Florida the average annual receipts of charter vessels total \$56,000 (\$68,000 using an alternative method) and those of headboats, \$140,000 (\$324,000 using an alternative method). They also reported that the average annual receipts for charter vessels in Georgia, South Carolina,

and North Carolina total \$57,000, \$26,000, and \$60,000, respectively. The average annual receipts for headboats in these areas amount to \$123,000. Although several vessels reported annual receipts well in excess of the average, none reported receipts close to the \$5 million threshold. Hence, it is clear that the criterion of a substantial number of the small business entities comprising the for-hire sector being affected by the proposed rule will be met.

#### Significant Economic Impact Criterion

The outcome of "significant economic impact" can be ascertained by examining two issues: disproportionality and profitability.

#### **Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?**

All the for-hire vessel operations potentially affected by the proposed rule are considered small entities so that the issue of disproportionality does not arise in the present case. It may only be noted that in general headboat operations are larger than charter boat operations in terms of revenues and costs as well as vessel, crew, and passenger sizes. In this case, the uniform initial cost of securing permits and endorsements, while relatively minimal, would be relatively less for headboats than for charter boats. At any rate, the issue of disproportional impacts is not a significant issue with respect to the for-hire fishery.

#### **Profitability: Do the regulations significantly reduce profit for a substantial number of small entities?**

Sutton et al. (1999) reported a negative net revenue (gross revenues minus total reported expenses) of \$12,099 for an average charter boat in the Alabama-Texas area. Operating profits, however, were a positive \$14,650 annually. For headboats, the estimated net revenue and operating profits were negative. The estimation of net revenues and profits could be affected by the mentioned underestimation of revenues and the calculation of net revenues/profits by simply subtracting average expenses from average revenues. In fact, Holland et al. (1999) noted this problem, and thus provided no estimates for net revenue or profit for the for-hire vessels in Florida.

Despite the absence of adequate numbers on for-hire vessel profitability, some statements can be made regarding the effects of the proposed rule on vessel profitability. The only time profitability of a for-hire vessel is negatively affected in a significant manner is when the vessel cannot qualify for permits/endorsements at the start of the moratorium. The likelihood for many vessels to be ineligible to initially qualify for the moratorium is rendered relatively low due to the adoption of liberal eligibility requirements. The Proposed Alternative pertaining to initial eligibility for permit/endorsement sets a cut-off date of March 29, 2001. This is a relatively recent date such that most of those operating in the for-hire fishery must have already obtained a permit by such date and thus would readily qualify for the moratorium. As noted earlier, the number of for-hire vessel permits rose by about 137 percent, from 940 on November 18, 1998 (original control date) to 2,226 on March 29,

2001 (moratorium cut-off date). This increase strongly implies that most operators may have already secured a for-hire vessel permit by the cut-off date and thus would meet the general eligibility requirement for initial inclusion in the moratorium. Those that have not had the permit by the cut-off date may still qualify under the vessel construction or historical captain provisions of the Proposed Alternative.

It is very likely that most of those currently participating in the fishery may initially qualify for permit/endorsement under the moratorium, but there are others who currently operate in other fisheries (such as those in state waters only in the Gulf and in other state or EEZ areas) that have occasionally ventured in the Gulf EEZ that may not qualify. These for-hire operations and the few that has been in operation in the Gulf but fail to qualify may experience significant negative impacts on their profitability. Such negative impacts cannot be estimated due to lack of information about these vessels. However, the transferability provision under the proposed moratorium would allow these vessel operations to enter or re-enter the Gulf for-hire fishery by purchasing permits from existing permit holders. But such permits may not be readily available and if they are they would cost more than the fee charged by NMFS for permits.

Description of significant alternatives to the proposed rule and discussion of how the alternatives attempt to minimize economic impacts on small entities: In the section on duration of the moratorium, several alternatives have been considered some of which are not moratorium alternatives. Of the moratorium alternatives, the only major feature introduced is the 5-year moratorium duration instead of the proposed 3-year moratorium. A 5-year moratorium has practically similar effects as the proposed 3-year period, with the exception that it would provide a higher likelihood that the number of for-hire vessels in the fishery would decline. The non-moratorium alternatives, except the status quo, have been determined to effect a reduction in fishery participants in the short-run, but an increase over the long-run, more than the moratorium alternatives. The consequent negative (or positive) economic impacts would mirror this short-run versus long-run scenario.

With respect to Gulf charter vessel/headboat permits/endorsements, seven other alternatives have been considered, including the status quo. Aside from the status quo (Alternative B-2), the only other significant alternatives would be Alternative B-4 and Alternative B-5. Alternative B-4 would impose more negative short-run economic impacts on certain for-hire vessels that would not meet the income requirement, although it pertains only to subsequent renewal of permits/endorsements. Alternative B-5 would allow more participants in the for-hire fishery, and although it may mitigate the impacts of restrictive regulations on the commercial reef fish king mackerel permit holders, it would worsen the economic performance of the for-hire fishery as a whole. Alternative B-7 affects an entirely distinct segment of the for-hire fishery, namely, the guide boat sector. This requirement would merely impose minimal additional fixed costs on affected entities, although it may provide additional information on other participants in the for-hire fishery.

On eligibility requirements, all alternatives, except Alternative C-1 and Alternative C-9, to the Proposed Alternative are likely to impose more negative impacts since the cut-off dates

chosen for these other alternatives are more restrictive than that under the Proposed Alternative. Alternative C-1, on the other hand, would tend to negate the objective of the proposed moratorium which is to freeze the number of for-hire vessels. This alternative would practically allow everyone with a boat to enter the for-hire fishery upon securing a for-hire vessel permit. Alternative C-9 would have about the same effects as the Proposed Alternative pertaining to historical captains.

As for permit/endorsement transfer during the moratorium, six other (than the Proposed Alternative) alternatives have been considered. These other alternatives range from a freely transferable permit/endorsement (Alternative D-2) to a non-transferable permit/endorsement transfer (Alternative D-4) during the moratorium. Alternative D-4 would prevent the development of a market for license, limit the ability of operators to change vessels either for a more efficient operation or for a safer vessel operation, and disallow transfer even due to hardships. Alternative D-2 would allow upgrading of operations possibly to a more efficient level from the perspective of an individual operation. On the other hand, it would allow an increase in capacity that may ultimately translate into an increase in overall fishing effort.

On vessel passenger restrictions on permit transfers, five other alternatives have been considered. These other alternatives range from virtually no capacity restrictions on permit/endorsement transfer (Alternatives E-1 and E-3) to some form of capacity restrictions in permit/endorsement transfer (Alternatives E-2, E-4, E-5). The less restrictive alternatives would have similar effects as Alternative D-2 while the more restrictive alternatives would have about similar effects as the Proposed Alternative.

On re-issuance of permits not renewed or permanently revoked, two other alternatives have been considered. Both of these other alternatives allow re-issuance of half of those permits that have not been renewed or have been permanently revoked. Although these other alternatives would allow entry or re-entry of some other for-hire vessels at relatively lower permit cost during the moratorium, possibility exists that capacity in the for-hire fishery would increase. This is would particularly true if those non-renewed permits were secured in the first place mainly for speculative purposes.

For the appeals process, six other alternatives have been considered. These other alternatives range from having no appeals process at all (Alternative G-1) to the establishment of an appeals process that would accommodate both cases of hardship and data/record disputes (Alternative G-4). Alternative G-1 provides the possibility that some for-hire vessel operations would cease mainly because of some simple data/record errors. Alternative G-4, on the other hand, would likely complicate the issuance of permits/endorsements as various hardship conditions would have to be specified and subsequently deliberated upon as to which ones are acceptable or which ones are not.

With respect to charter vessel reporting and permit renewal conditions, two other alternatives have been considered. Alternative 3 would require charter vessels to submit logbooks as condition for permit/endorsement renewal. Although this would provide more information as to the activities of charter vessels, it would impose more reporting burden on industry participants. Alternative 4 (status quo), which would not require logbooks or participation

in a survey as condition for permit/endorsement renewal, is the least burdensome of all alternatives for permit/endorsement renewal condition. But the Council's Proposed Alternative was chosen in order to limit refusals by charter vessel operators in data collection activities.

### Conclusion

Practically for-hire vessel operations in the Gulf would be affected by the proposed moratorium, and most of these vessel operations are unlikely to experience reduced profits with the implementation of the moratorium. But there is a chance, however, that a few for-hire vessels have been operating in the Gulf and many others that mainly operate in state waters in the Gulf or in other EEZ areas that occasionally venture in the Gulf EEZ would not initially qualify. The impacts on these vessel operations are unknown. Without considering these vessels, the moratorium would not result in significant economic impacts on a substantial number of small entities.

## **9.0 ENVIRONMENTAL ASSESSMENT**

The purpose and need for action for this amendment are contained in Section 3, with additional discussion in Section 4. The list of proposed actions is contained in Section 5. The full list of alternatives considered, including rejected alternatives, is listed for each issue in the appropriate issue section (Sections 6.0 and 7.0). The description of the affected environment effects of the fishery were discussed in the SEIS for Amendment 5 and are incorporated in this amendment by reference.

Discussion of the environmental consequences of the alternatives is set forth in the sections containing the alternatives (Sections 6.0 and 7.0) and constitutes the bulk of the environmental assessment with respect to the specific alternatives. Additional information concerning human impacts is contained in the RIR, and in the Economic Impacts subsection under each of the sets of alternatives.

### **9.1 AFFECTED ENVIRONMENT AND CONSEQUENCES**

**9.1.1 *Essential Fish Habitat (EFH):*** An EFH review of an Amendment for a Charter Vessel/Headboat Permit Moratorium Amending the FMPs for Reef Fish (Amendment 20) and Coastal Migratory Pelagics (Amendment 14) was completed in December 2002. The area affected by the proposed amendment in the reef fish and coastal migratory pelagic fisheries has been identified as EFH for the Red Drum, Reef Fish, Shrimp, Stone Crab, and Coral FMPs of the Gulf Council; Coastal Migratory Pelagics and Spiny Lobster joint FMPs of the Gulf and South Atlantic Councils; and the Tuna/Swordfish/Shark and Billfish FMPs of the NMFS Highly Migratory Species. The actions are intended to conserve and enhance the stocks of reef fish and coastal migratory pelagic fishes by limiting overall fishing efforts in the fisheries, and in the context of the fisheries as a whole will not have an adverse impact on EHF. Therefore, an EFH consultation is not required.

The reef fish habitats and related concerns were described in the FMP/Environmental Impact Statement (EIS) and were updated in Amendments 1, Amendment 5/SEIS and the generic amendment describing EFH for all Gulf fisheries. Reef Fish Amendment 18/SEIS, when completed by the Council, will update the description of EFH. The coastal migratory pelagic habitats and concerns were described in the FMP/EIS and updated in Amendment 1/SEIS, Amendment 3, and the generic amendment describing EFH for all Gulf fisheries.

The moratorium would cap future participation in the recreational-for-hire fisheries and thereby moderate short-term increases in fishing effort and fishing mortality rates. Therefore, the moratorium is not expected to have a negative effect on EFH. Additionally, there are no expected changes in associated management measures for the recreational-for-hire sectors of the reef fish or coastal migratory pelagics fishery. The affected fisheries are prosecuted with hook-and-line gear and the moratorium is not expected to alter these existing fishing practices. Therefore, the impacts of the proposed amendment on EFH may be considered nil.

**9.1.2 Fishery Resources:** The Council, in cooperation with the Gulf charter vessel/headboat (for-hire) industry, developed the proposed amendment to address issues of increased fishing effort and fishing mortality rates in the for-hire sector of the recreational fishery. The overfished status of several of the major stocks targeted by and the continuing expansion of the recreational-for-hire sector are problems that support the development and implementation of this moratorium. In 1998, there were an estimated 3,220 recreational-for-hire vessels in the Gulf of Mexico. Of these for-hire vessels, there are an estimated 1,275 charter vessels and 92 headboats; the remainder are probably smaller guide boats that usually fish inshore. The number of charter boats operating in the Gulf of Mexico has increased from 516 in 1981 to 1,275 in 1998 (147 percent), while the number of headboats has remained relatively stable during the same period. Further, the number of individual angler charter vessel trips increased by approximately 51 percent (through 1998) over the average number of trips from the previous decade.

During this same period, there has been an increase in the number of fish stocks identified as overfished or approaching an overfished state. In the January 2001 report to Congress on the Status of U.S. Fisheries, red snapper and red grouper were classified as being overfished and undergoing overfishing. Gag grouper was classified as undergoing overfishing and approaching an overfished state. King mackerel was classified as overfished and vermilion snapper was classified as undergoing overfishing. Further, the Council was notified, by a letter from NMFS in February 2001, that greater amberjack was overfished. While all sectors have contributed to the overfished status of these important fisheries, increased fishing effort and fishing mortality rates by the for-hire sector in recent years have substantially increased the proportion of landings attributed to that sector. The percentage of recreational red grouper by number, landed by the recreational-for-hire sector increased from 14 percent (1988/1989) to 32 percent (1996-1997) of the total recreational landings; the percentage of recreational red snapper landed by number, by the recreational-for-hire sector increased from 34 percent (1981-1982) to 62 percent (1988-1989) to 71 percent (1996-1997) of the total recreational landings. This increased catch rates by the recreational-

for-hire sector has contributed to the progressively earlier closures of the red snapper recreational fishery each year. This fishery was closed on November 27 in 1997, September 30 in 1998, and August 29 in 1999. This progressively longer closure period is adversely impacting the charter vessel/headboat sector that is dependent on this stock. Additionally, for king mackerel, the percentage of recreational landings by number, caught by the recreational-for-hire sector increased from 17 percent in 1983, to 32 percent in 1988, and to 62 percent of the total recreational landings in 1997, almost doubling between each period. For gag grouper, the percentage of recreational landings by number, caught by the recreational-for-hire sector increased from 15 percent during 1981-1982 to 33 percent of the total recreational landings during 1995-1996, i.e., essentially doubling between the first and last period. Further, recreational-for-hire vessels historically have landed most of the recreational landings of vermilion snapper (90 percent) and greater amberjack (63 percent) during the period 1995-1996.

In conjunction with existing bag limits and size limits, the moratorium will further moderate short-term future increases in fishing effort in the for-hire sector of the recreational fishery by limiting the number of vessels in the fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize this effort. It would allow the Council the time necessary to develop a more comprehensive approach to help restore overfished stocks, possibly including further effort limitation, and would promote attainment of optimum yield during the interim.

**9.1.3 *Human Environment:*** Several benefits to the human environment will result from the proposed amendment. In conjunction with existing bag limits and size limits, the proposed moratorium would further moderate short-term increases in fishing effort in the for-hire sector of the recreational fishery by limiting the number of vessels in the fishery. The proposed moratorium is a form of limited access management that is intended to temporarily stabilize this effort. It would allow the Council the time necessary to develop a more comprehensive approach to help restore overfished stocks possibly including further effort limitations, and would promote attainment of OY during the interim.

Because the moratorium allows transfer of permits by selling them to other persons it is essentially a temporary license limitation system. Additionally, the moratorium program considered the present participation in the fisheries to the fullest extent. It became obvious in the development of the moratorium, and from public comment, that there were numerous vessels operating in the Gulf recreational-for-hire fisheries that had not obtained permits. Apparently some participants were unaware of the permit requirements. As the Council continued development of the amendment more for-hire fishermen became aware of the permit requirement and obtained permits. The number of vessels operating out of the Gulf (including Monroe County, Florida) ports with permits for the reef fish or coastal migratory pelagic fisheries was 940 on November 18, 1998 (old control date) and 1,650 vessels by August 2000, or an increase of 75 percent. To be sure that the current participants had an opportunity to be included, the Council selected March 29, 2001, as the new control date for eligibility. This takes into full consideration historical fishing practices and dependence on the fisheries.

Further, the economics of the fisheries, and the cultural and social framework relevant to the fisheries and fishing communities were prime considerations of the Council in establishing permit qualification under the March 29, 2001, control date. A more restrictive control date could have been selected that would have reduced the number of qualifying vessels. The chosen control date should effectively allow qualification and continued operation of nearly all vessels or business entities currently participating in these fisheries and, thereby, not alter the economic, social, or cultural framework of the fishing communities, other than through the short term preclusion of participation expansion. During the moratorium, new participation into the fisheries could still occur through the transfer of existing permits, albeit at a higher entry cost than in the absence of the moratorium. Thus, new entry could continue to occur without resulting in increased fishing mortality rates on the affected stocks. In the absence of the moratorium, under status quo conditions, entry of new vessels into the fishery could continue unabated. This would result in increased participation, thereby increasing fishing mortality rates on the stocks, which may necessitate more restrictive regulations on the harvest of individual species. This would be expected to produce declines in angler benefits and participation, for-hire and support industry profitability, and degradation of the social and cultural framework surrounding these fisheries. The temporary reduction in increased fishing mortality rates, through the cap on participation, should forego these adverse conditions.

In determining the actions needed to address the stocks that are either overfished or undergoing overfishing, the Council may impose actions that require altering the economic, social, or cultural framework of the fishing communities. However, since no vessels in the fisheries as of the March 29, 2001, control date, are forecast to be displaced by the moratorium, the issue of the capability of these vessels to be used in other fisheries is not a factor that needs to be determined.

**9.1.4 *Effects on Endangered and Threatened Species:*** An informal section 7 consultation was completed for this proposed amendment in February 2003 as required by the Endangered Species Act. The consultation indicated that actions in the proposed amendment do not change current fishing practices in the recreational-for-hire fisheries and, therefore, would not be likely to adversely affect endangered or threatened species or adversely impact their critical habitat.

**9.1.5 *Effects on Wetlands:*** The proposed amendment would not affect the recreational-for-hire sector of the reef fish and coastal migratory pelagics fishery which are prosecuted with hook-and-line gear. The proposed amendment is not expected to alter existing fishing practices in these fisheries which do not normally occur on flood plains, wetlands, trails, or rivers therefore, the impact on these habitats is nil.

**9.1.6 *Unavoidable Adverse Impacts:*** The proposed amendment basically caps the number of charter vessel/headboat permits at existing levels as of the March 29, 2001, control date. Because the moratorium allows transfer of permits by selling them to other persons it is essentially a temporary license limitation system. It would allow the Council the time necessary to develop a more comprehensive approach to help restore overfished stocks

possibly including further effort limitations, and would promote attainment of OY during the interim. Thus, the moratorium is beneficial to the reef fish resources of the Gulf of Mexico and the coastal migratory pelagics resources of the Gulf and South Atlantic. Therefore, there are no unavoidable adverse impacts associated with the proposed amendment.

**9.1.7 *Relationship Between Short Term Use and Long Term Productivity:*** The intent of the proposed amendment is to cap the number of participants in the recreational-for-hire fisheries by capping the number of permits at existing levels as of the March 29, 2001, control date. This action would moderate short-term increases in fishing effort on several of the major stocks targeted by the recreational-for-hire sector. Several stocks targeted by the recreational-for-hire fisheries are overfished and are undergoing overfishing (i.e., red snapper, red grouper, greater amberjack) and the proposed moratorium would assist in their recovery by reducing directed fishing mortality rates. Thus, the moratorium would enhance the long-term productivity of the reef fish resources of the Gulf of Mexico and the coastal migratory pelagics of the Gulf and South Atlantic. Additionally, the moratorium would be consistent with the goals of proposed rebuilding plans for red snapper and red grouper submitted to NMFS by the Council, for Secretarial review.

Further, establishing the moratorium is not expected to adversely affect the recreational-for-hire fisheries as it does not change current fishing practices in the industry nor does it impose any additional regulatory burdens.

**9.1.8 *Irreversible and Irrecoverable Commitment of Resources:*** The proposed moratorium would provide stability to the recreational-for-hire fisheries and avoid short-term economic losses to all sectors, including coastal fishing communities dependent upon the fisheries. The reduction in fishing effort will enable many of the stressed stocks targeted by these fisheries to rebuild. Establishment of the moratorium is not expected to adversely affect the recreational-for-hire sector as it does not change current fishing practices in these fisheries nor does it impose any additional regulatory burdens. Therefore, there are no irreversible or irretrievable commitments of resources associated with the action.

**9.1.9 *Cumulative Effects:*** The overall cumulative effect of the proposed moratorium is to provide stability to the recreational-for-hire fisheries, reduce short-term increases in fishing mortality rates, avoid economic losses to all sectors of the fishery including dependent coastal fishing communities, and allow the targeted stocks to rebuild. The proposed amendment basically caps the number of charter vessel/headboat permits at existing levels as of the March 29, 2001, control date. It would allow the Council the time necessary to develop a more comprehensive approach to help restore overfished stocks, possibly including further effort limitations, and would promote attainment of OY during the interim. Therefore, the moratorium is beneficial to the reef fish resources of the Gulf of Mexico and the coastal migratory pelagics resources of the Gulf and South Atlantic. Further, establishing the moratorium is not expected to adversely affect the recreational-for-hire fisheries as it does not change current fishing practices in these fisheries nor does it impose any regulatory burdens.

## **10.0 ASSESSMENT OF SIGNIFICANT FACTORS**

### **10.1 Finding of No Significant Environmental Impact (FONSI)**

Sections 3.0, 4.0, and 5.0 describe the proposed amendment in detail.

Section 1508.27 of the CEQ Regulations lists 10 points to be considered in determining whether or not impacts are significant. The analyses presented below are based on the information contained in the EA submitted by the Council and the supplement prepared by NMFS.

#### **10.1.1 Beneficial and Adverse Impacts**

The beneficial and adverse impacts for the proposed amendment are described in Section 3.0.

#### **10.1.2 Public Health or Safety**

The proposed amendment does not change existing fishing practices or processing procedures in the recreational-for-hire fisheries. Therefore, it is not expected to have any significant adverse impact on public health or safety.

#### **10.1.3 Unique Characteristics**

The proposed amendment is designed to stabilize and limit the number of participants in the recreational-for-hire fisheries. The recreational-for-hire sector of the Gulf reef fish and Gulf and south Atlantic coastal migratory pelagics fishery are prosecuted with hook-and-line gear. The proposed amendment is not expected to alter existing fishing practices in these fisheries and, therefore, is not expected to have any significant adverse impact on unique characteristics of the area such as proximity to historic or cultural resources, park lands, wetlands or ecologically critical areas.

#### **10.1.4 Controversial Effects**

The charter vessel/headboat permit moratorium is controversial and has been the subject of a Congressional correspondence from Senator Bob Graham to Penny Dalton (ref SERO Control No. SER00-223). Additionally, the establishment of a March 29, 2001, control date is also expected to be controversial, even though this control date would allow a greater number of for-hire permitted vessels to enter the fishery than the existing November 18, 1998, control date.

### **10.1.5 Uncertainty or Unique/Unknown Risks**

The proposed amendment is designed to stabilize and limit the number of participants in the recreational-for-hire fisheries. Analyses undertaken by the Council and NMFS in the development and evaluation of this proposed amendment do not indicate that any of the proposed actions will have any significant effects on the human environment which are highly uncertain or involve unique or unknown risks.

### **10.1.6 Precedent/Principle Setting**

The proposed amendment is designed to stabilize and limit the number of participants in the recreational-for-hire fisheries. The moratorium may be considered as a prelude to a more comprehensive controlled access management system in the for-hire fisheries. It serves as the first approach to limiting the number of participants and places the fishery in a relatively stable condition for the purpose of designing controlled access management. Therefore, the proposed amendment is expected to have significant effects by establishing precedent and includes actions which would represent a decision in principle about a future consideration.

### **10.1.7 Relationship/Cumulative Impact**

The overall cumulative impact of the proposed moratorium will provide stability to the recreational-for-hire fisheries, avoid short-term economic losses to all sectors of the fisheries including dependent coastal communities, and allow targeted stocks to rebuild. The proposed amendment basically caps the number of charter vessel/headboat permits at existing levels as of the March 29, 2001, control date. It would allow the Council the time necessary to develop a more comprehensive approach to help restore overfished stocks possibly including further effort limitations, and would promote attainment of OY during the interim. Therefore, the moratorium is beneficial to the reef fish resources of the Gulf of Mexico and the coastal migratory pelagics resources of the Gulf and South Atlantic. Further, establishing the moratorium is not expected to adversely affect the recreational-for-hire sectors of the Gulf reef fish and Gulf and South Atlantic coastal migratory pelagics fisheries as it does not change current fishing practices in these fisheries nor does it impose any regulatory burdens.

### **10.1.8 Historical/Cultural Impacts**

The proposed amendment would moderate short-term future increases in fishing effort and stabilize fishing mortality in the for-hire sector of the recreational fishery. Therefore, the proposed amendment is not expected to have any significant effects on historical sites listed in the National Register of Historic Places and will not result in any significant impacts on significant scientific, cultural or historical resources.



## **11.0 OTHER APPLICABLE LAWS**

### **11.1 Vessel Safety Considerations**

PL. 99-659 amended the Magnuson-Stevens Act to require that a fishery management plan or amendment must consider, and may provide for, temporary adjustments (after consultation with the U.S. Coast Guard and persons utilizing the fishery) regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels.

No vessel will be forced to participate in the fishery under adverse weather or ocean conditions as a result of the proposed amendment.

There are no fishery conditions, management measures, or regulations contained in the proposed amendment that would result in the loss of harvesting opportunity because of crew and vessel safety effects of adverse weather or ocean conditions. No concerns have been raised by people engaged in the fishery or the Coast Guard that the proposed amendment directly or indirectly pose a hazard to the safety of crew or vessel under adverse weather or ocean conditions. Therefore, there are no procedures for making management adjustments in this proposed amendment due to vessel safety problems because no person will be precluded from a fair or equitable harvesting opportunity by the proposed amendment set forth.

There are no procedures to monitor, evaluate, and report on the effects of the proposed amendment on vessel or crew safety under adverse weather or ocean conditions.

### **11.2 Coastal Zone Consistency**

Section 307 (c) of the Federal CZMA of 1972 requires that all Federal activities which directly affect the coastal zone be consistent with approved coastal zone management programs to the maximum extent practicable. The proposed changes in Federal regulations governing reef fish or coastal migratory pelagics in the Gulf of Mexico or South Atlantic will make no changes in Federal regulations that are inconsistent with either existing or proposed state regulations.

Where applicable, this proposed amendment is consistent with the Coastal Zone Management programs of the states of Alabama, Florida, Louisiana, Mississippi and Texas to the maximum extent possible. A determination was submitted on January 19, 2001, to the responsible state agencies under Section 307 of the CZMA administering approved Coastal Zone Management programs in the states of Alabama, Florida, Mississippi, Louisiana and Texas (attached).

On February 7, 2001, the Louisiana Coastal Management Program determined that this action is consistent with that State's respective Coastal Management Program. On March 8, 2001, the Florida Coastal Management Program determined that this action is consistent

with that State's respective Coastal Management Program. The Coastal Management Programs of Alabama, Mississippi, and Texas did not respond, so consistency is inferred.

### **11.3 Endangered Species Act (ESA)**

The Sustainable Fisheries Act of 1996 established certain requirements and standards the Councils and the Secretary must meet in managing fisheries under the Magnuson-Stevens Act. An informal section 7 consultation was completed for this proposed amendment in January 2003, as required by the Endangered Species Act. The consultation indicated that actions in the proposed rule do not change current fishing practices in the recreational-for-hire sector and, therefore, would not be likely to adversely affect endangered or threatened species or adversely impact their critical habitat.

#### **11.3.1 ESA Consultation History**

Final regulations implementing the Reef Fish Fishery Management Plan (FMP) became effective on November 8, 1984. The April 28, 1989, Biological Opinion (BO) on the effects of commercial fishing activities under the Reef Fish FMP in the Gulf of Mexico found that mortalities of endangered and threatened species are uncommon from the hook-and-line and bottom longline gear used in the reef fish fishery and were not likely to jeopardize the continued existence of threatened and endangered species. Assessments of the level of take were not considered a high priority, and the BO concluded that the activities under this FMP would not jeopardize the continued existence of threatened or endangered species under NMFS purview. In addition, informal consultations have been conducted on the FMP, amendments 1 through 9, 11, 14, 15, 16, 17 and associated regulatory amendments. These consultations concluded that the fishery management actions were not likely to adversely affect any threatened or endangered species under NMFS jurisdiction. An August 19, 1992, BO on the effects of the commercial fishing activities under the Coastal Migratory Pelagics FMP in the Gulf of Mexico found that the use of gillnets under this FMP was likely to adversely affect sea turtles (loggerhead, green, hawksbill, leatherback, and Kemp's ridley) but was not likely to jeopardize their continual existence.

The proposed amendment is designed to cap the number of participants in the recreational-for-hire fisheries. Therefore, the proposed amendment does not change the basis for the findings of previous consultations on these FMPs. Previous formal consultations have concluded that activities associated with these FMPs are not likely to jeopardize the continued existence of threatened or endangered species under NMFS purview or result in the destruction or adverse modification of critical habitat for those species. The management actions of the proposed amendment are not expected to change the potential impacts to threatened and endangered species and their critical habitat.

#### **11.3.2 Effects on Endangered and Threatened Sea Turtles**

The proposed amendment is designed to stabilize and limit the number of participants in the recreational-for-hire fisheries. The affected fisheries are prosecuted with hook-and-line

gear. The proposed amendment is not expected to alter existing fishing practices and, therefore, any additional potential fishery interactions on listed species will be nil.

### **11.3.3 Effects of Other Hook and Line Fishery Activities**

Federally-regulated commercial fishing operations represent the major human source of sea turtle injury and mortality in U.S. waters. The pelagic fishery for swordfish, tuna, and shark, which is prosecuted over large areas of the northwestern Atlantic and the Gulf of Mexico, has a fairly large bycatch of sea turtles. NMFS<sup>1</sup> estimated that the longline component of this fishery would annually take, through hooking or entanglement, 690 leatherbacks, 1,541 loggerheads, 46 green, and 23 Kemp's ridley turtles, with a projected mortality rate of 30 percent. State regulated recreational fishing activities in the Gulf of Mexico inshore and nearshore waters take endangered and threatened species of sea turtles. These takes are not always reported and are unauthorized. In a study conducted by the NMFS Galveston Laboratory between 1993 through 1995, 170 Kemp's ridley sea turtles were reported associated with recreational hook-and-line gear, including 18 dead stranded turtles, 51 rehabilitated turtles, five that died during rehabilitation, and 96 that were released by fishermen.<sup>2</sup>

The Sea Turtle Stranding and Salvage Network (STSSN) also receives stranding reports that identify carcass anomalies (e.g., entangled in line or net, fish line protruding, fish hook in mouth or digestive tract, fish line in digestive tract) that may be associated with the recreational fishery. The reports do not distinguish between commercial or recreational sources of gear, such as hook and line, which may be used in both sectors. Cumulatively, fishery entanglement anomalies reported by the Florida STSSN consist of approximately 4 percent of the stranded sea turtle carcasses reported between 1988 and 1997 and are expected to remain at that level, based on historic trends. Overall, mortalities of endangered and threatened species of sea turtles are uncommon from tended hook-and-line gear used in the recreational fishery, but are more common in the untended hook-and-line gear used by the commercial sector.

<sup>1</sup>NMFS. 1997. National Marine Fisheries Service Endangered Species Act section 7 Consultation on the Atlantic pelagic fishery for swordfish, tuna, and shark, in the Exclusive Economic Zone. Biological Opinion, May 29. 95 pp.

<sup>2</sup>Cannon, A. et al. 1996. National Marine Fisheries Service Laboratory, Galveston, Texas.

### **11.4 Marine Mammals Protection Act**

The proposed amendment is designed to stabilize and limit the number of participants in the recreational-for-hire fisheries. These fisheries are prosecuted with hook-and-line gear and do not normally interact with marine mammals. The proposed amendment is not expected to alter existing fishing practices in these fisheries therefore, NMFS has determined that fishing activities conducted under this proposed amendment will have no adverse impact on marine mammals.

## **11.5 Paperwork Reduction Act (PRA)**

The purpose of the PRA is to control paperwork requirements imposed on the public by the Federal government. The authority to manage information collection and record keeping requirements is vested with the Director of the Office of Management and Budget. This authority encompasses establishment of guidelines and policies, approval of information collection requests, and reduction of paperwork burdens and duplications.

This proposed amendment contains 5 collection-of-information requirements subject to the PRA, namely a requirement to submit a charter vessel/headboat permit application, submission of information on vessel construction, submission of information on historical captain eligibility, submissions of appeals of NMFS' initial denial of a charter vessel/headboat permit, and mandatory responses to voluntary charter vessel/headboat telephone interviews. Requests to collect this information have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burdens for these collections of information are estimated to average 20 minutes, 2 hours, 2 hours, 5 hours, and 7 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. In addition, § 622.5(b)(1) of the proposed rule accompanying the amendment revises slightly (i.e., revises the names of the applicable permits consistent with this proposed rule) the requirement for charter vessel/headboat submission of a fishing trip record if selected by the Science and Research Director. The requirement applicable to headboats has been approved by OMB under control number 0648-0016 with an estimated time per response of 12 minutes. NMFS does not currently have PRA approval to select any charter vessels for this reporting and would obtain OMB clearance prior to making any selection.

## **11.6 Federalism**

No federalism issues have been identified relative to the proposed amendment.

## **12.0 LIST OF AGENCIES AND PERSONS CONSULTED**

The following agencies were consulted on the provisions of this amendment:

### **Gulf of Mexico Fishery Management Council:**

- Standing Scientific and Statistical Committee
- Socioeconomic Panel
- Ad Hoc Charter Vessel/Headboat Advisory Panel
- Law Enforcement Advisory Panel

### **Coastal Zone Management Programs:**

- Texas
- Louisiana

Mississippi  
Alabama  
Florida

**National Marine Fisheries Service:**

Southeast Regional Office  
Southeast Fisheries Science Center

**13.0 PUBLIC HEARING LOCATIONS AND DATES**

Public hearings for the public hearing Draft Charter Vessel/Headboat Permit Moratorium Amendment were held beginning at 7:00p.m. (6:00 p.m. in Biloxi) at the following locations and dates as listed below. In addition, public testimony was heard at the Gulf Council meeting in Mobile, Alabama on March 28, 2001. Written comments were accepted if received at the Council office by March 12, 2001.

**Monday, February 5, 2001**

Laguna Madre Learning Center  
Port Isabel High School  
Highway 100  
Port Isabel, TX 78578  
956-943-0052

Biloxi, MS 39530  
228-374-5000

**Tuesday, February 6, 2001**

Port Aransas Community Center  
408 North Allister  
Port Aransas, TX  
361-749-4111

**Wednesday February 7, 2001**

Texas A&M University  
200 Seawolf Parkway  
Galveston, TX 77553  
409-740-4416

**Monday, February 12, 2001**

Larose Regional Park  
307 East 5<sup>th</sup> Street  
Larose, LA 70373  
504-693-7380

**Tuesday, February 13, 2001 (6:00 p.m.)**

MS Department of Marine Resources  
1141 Bayview Drive

Wednesday, February 14, 2001

Hilton Beachfront Garden Inn  
23092 Perdido Beach Boulevard  
Orange Beach, AL 36561  
334-974-1600

Thursday, February 15, 2001

National Marine Fisheries Service  
3500 Delwood Beach Road  
Panama City, FL 32408  
850-234-6541

Monday, February 19, 2001

Holiday Inn Beachside  
3841 North Roosevelt Boulevard  
Key West, FL 33040  
305-294-2571

Tuesday, February 20, 2001

Naples Depot Civic Cultural Center  
1051 Fifth Avenue South  
Naples, FL 34102  
941-262-1776

Wednesday February 21, 2001

Madeira Beach City Hall  
300 Municipal Drive  
Madeira Beach, FL 33708  
727-391-9951

**14.0 LIST OF PREPARERS**

Gulf of Mexico Fishery Management Council  
Wayne Swingle - Fishery Biologist  
Antonio Lamberte - Economist

National Marine Fisheries Service  
Phil Steele - Fishery Administrator

## 15.0 REFERENCES

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- GMFMC. 1999. Generic sustainable fisheries act amendment to the following FMPs: coral and coral reefs, coastal migratory pelagics, red drum, reef fish, shrimp, spiny lobster, and stone crab. GMFMC, Tampa, FL. 157 p. plus tables and appendices.
- Holiman, S.G. 1998. (Personal Communication). 1995/1996 charter vessel/headboat and recreational landing data for greater amberjack.
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- Holland, S.M. 1998 (Personal communication). Charter vessel census data from 1997-1998 MARFIN projects entitled: (1) the structure and economics of the charter and head boat fishing fleets of Texas, Louisiana, Mississippi, and Alabama, and (2) operations and economics of the charter and party boat fleets of the eastern Gulf of Mexico and South Atlantic coasts. Univ. of Florida, Gainesville, FL. Memo. Rpt.
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- Socioeconomic Panel. 1996. Report of socioeconomic panel meeting on amendment 15 options paper and assessment of selected reef fish species. GMFMC, Tampa, FL. 13 p.
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- Sutton, S.G., R.B. Ditton, J.R. Stoll, and J.W. Milon. 1999. A cross-sectional study and longitudinal perspective on the social and economic characteristics of the charter and party

boat fishing industry of Alabama, Mississippi, Louisiana, and Texas. Texas A&M Univ., College Station, TX. Memo. Rpt. 198 p.

Walker, B. and C. Pease. 2000. Letter to Gulf of Mexico Fishery Management Council members. 2 p.

## 16.0 TABLES

<b>Table 1. Change in the Number and Percent of Charter Vessels and Headboats in the Gulf Region by States for the Period 1981-1998</b>						
<b>Florida:<sup>1</sup></b>	<b>1981</b>	<b>1988</b>	<b>(%)<sup>2</sup></b>	<b>1998</b>	<b>(%)<sup>3</sup></b>	<b>(%)<sup>4</sup></b>
Charter Boat	364	738	(+102)	<b>845</b>	(+16)	<b>(+132)</b>
Headboat	53	70	(+32)	<b>69</b>	(-1)	<b>(+30)</b>
<b>Total</b>	417	808	(+93)	<b>914</b>	<b>(+13)</b>	<b>(+119)</b>
<b><u>Alabama:</u></b>						
Charter Boat	21	38	(+81)	110	(+189)	(+424)
Headboat	6	3	(-50)	4	(+33)	(-37)
<b>Total</b>	27	41	(+52)	114	(+178)	(+322)
<b><u>Mississippi:</u></b>						
Charter Boat	24	21	(-12)	85	(+305)	(+254)
Headboat	5	3	(-40)	1	(-67)	(-80)
<b>Total</b>	29	24	(-17)	86	(+258)	(+197)
<b><u>Louisiana:</u></b>						
Charter Boat	31	49	(+58)	50	(+2)	(+61)
Headboat	18	2	(-88)	0	(-100)	(-100)
<b>Total</b>	49	51	(+4)	50	(-2)	(+2)
<b><u>Texas:</u></b>						
Charter Boat	76	130	(+71)	185	(+42)	(+143)
Headboat	12	19	(+58)	18	(-5)	(+50)
<b>Total</b>	88	149	(+69)	203	(+36)	(+131)
<b><u>Gulf Region:</u></b>						
Charter Boat	516	976	(+89)	<b>1275</b>	<b>(+31)</b>	<b>(+147)</b>
Headboat	94	97	(+3)	<b>92</b>	<b>(-5)</b>	<b>(-2)</b>
<b>Total</b>	610	1073	(+76)	<b>1367</b>	<b>(+27)</b>	<b>(+124)</b>

1. Florida west coast, including the Florida Keys
2. Percent change between 1981 and 1988
3. Percent change between 1988 and 1998
4. Percent change between 1981 and 1998

Sources: Schmied (1981)  
Holland and Milon (1989)  
Ditton and Gill (1989)  
Holland (1998)

**Table 2.** Number of Recreational For-Hire Vessels Licensed by the Gulf States.

A STATE / CLASS	FISCAL YEAR										
	89/90	90/91	91/92	92/93	93/94	94/95	95/96	96/97	97/98	98/99	99/00
FL / 0-4 passengers	339	705	820	889	974	1181	1168	1273	1626	1737	1900
FL / 0-10 passengers	1479	979	859	851	823	847	754	691	830	838	900
FL / ≥11 passengers	<u>231</u>	<u>204</u>	<u>157</u>	<u>137</u>	<u>133</u>	<u>168</u>	<u>135</u>	<u>121</u>	<u>149</u>	<u>151</u>	<u>147</u>
<b>FL Total 1/</b>	2049	1888	1836	1877	1930	2196	2057	2085	2605	2726	2947
<b>AL / Total 1/</b>	--	--	--	68	80	88	89	99	98	109	131
<b>MS / Total 1/</b>	80	46	41	42	70	83	89	95	90	89	124
LA / 0-6 passengers	--	--	--	--	--	64	202	260	298	377	445
LA / >6 passengers	--	--	--	--	--	<u>4</u>	<u>24</u>	<u>21</u>	<u>23</u>	<u>29</u>	<u>31</u>
<b>LA / Total 2/</b>	--	--	--	--	--	68	226	281	321	406	476
<b>TX / Total 3/</b>	<u>360</u>	<u>391</u>	<u>411</u>	<u>428</u>	<u>484</u>	<u>573</u>	<u>656</u>	<u>659</u>	<u>669</u>	<u>686</u>	<u>715</u>
<b>Gulf Total</b>	2489	2325	2288	2415	2564	3008	3117	3219	3783	4016	4393

1/ Listed as Charter Boats.

2/ Calendar Years (2<sup>nd</sup> number). License Issued to Persons not Vessels.

3/ For Coastal Counties Only. Listed as Guide Boats.

Source: State Fishery Directors

**Table 3.** Coastal Migratory Pelagics Charter Vessel/Headboat Permits by Gulf Port - January 2000

**Alabama**

Alabama Point	1
Bon Secour	1
Dauphin Island	13
Fairhope	3
Fort Morgan	1
Gulf Shores	1
Lillian	1
Mobile	4
Orange Beach	83
Perdido Beach	1
<b>Total</b>	<b>109</b>

**Florida**

Anna Maria	2
Apalachicola	3
Big Pine Key	4
Big Torch Key	1
Boca Grande	7
Bokeelia	1
Bonita Springs	2
Bradenton	4
Brooksville	1
Cantonment	1
Cape Coral	5
Carrabelle	13
Cedar Key	4
Clearwater	18
Clearwater Beach	6
Cortez	7
Crawfordville	2
Crystal River	3
Cudjoe Key	3
Destin	94
Dunedin	4
Edgewater	1
Englewood	10
Fort Myers	5
Fort Myers Beach	13
Fort Walton Beach	1
Gulf Breeze	4
Hernando Beach	2
Holmes Beach	3
Homestead	2
Hudson	1
Indian Pass Beach	1
Inglis	1

**Florida (Cont'd)**

Indian Rocks Beach	3
Islamorada	45
Keaton Beach	1
Key Colony Beach	4
Key Largo	15
Key West	89
Largo	2
Little Torch Key	3
Lynn Haven	1
Madeira Beach	4
Marathon	38
Marco Island	16
Mary Ester	1
Mexico Beach	11
Milton	1
Naples	31
New Port Richey	2
Niceville	3
Nokomis	5
North Port	1
North Redington Beach	1
Okaloosa Island	1
Orange Park	1
Palm Harbor	2
Panacea	3
Panama City	75
Panama City Beach	28
Pensacola	37
Pensacola Beach	2
Placida	2
Plant City	1
Port Richey	2
Port St. Joe	2
Punta Gorda	2
Ramrod Key	2
Redington Shores	1
Saint George Island	2
Saint James City	2
Saint Petersburg	16
Saint Pete Beach	2
Sarasota	7
Seminole	4
Shalimar	1
South Pasadena	2
Steinhatchee	9
Sugar Loaf Key	5

**Florida (Cont'd)**

Sugar Loaf Shores	4
Summerland Key	9
Sundance	1
Suwannee	3
Tallahassee	1
Tampa	8
Tarpon Springs	2
Tavernier	9
Treasure Island	4
Venice	7
Yankeetown	1
<b>Total</b>	<b>766</b>

**Louisiana**

Cameron	4
Chauvin	18
Cocodrie	2
Cypremont Point	1
Empire	1
Port Fourchon	7
Golden Meadow	4
Grand Isle	4
Gueydon	1
Houma	2
Lake Charles	1
Larose	1
Leeville	2
New Orleans	4
Pierre Park	1
Slidell	1
Venice	2
<b>Total</b>	<b>56</b>

**Mississippi**

Bay St. Louis	1
Biloxi	43
D'Iberville	1
Escatawpa	1
Gautier	1
Gulfport	9
Laurel	1
Long Beach	2
Ocean Springs	5
Pascagoula	3
<b>Total</b>	<b>67</b>

**Texas**

Alvin	1
Aransas Pass	11
Crystal Beach	1
Deer Park	1
Freeport	37
Friendswood	1
Galveston	35
Helotes	1
Houston	23
Ingleside	3
Lake Jackson	2
Matagorda	2
Nederland	2
Port Aransas	55
Port Arthur	2
Port Isabel	3
Port Lavala	1
Port Mansfield	5
Port O'Connor	16
Portland	1
Pottsboro	1
Rockport	1
Sabine Pass	2
South Padre Island	8
Spring	1
Surfside	2
<b>Total</b>	<b>218</b>

**Gulf Total** 1,216

South Atlantic Area 604

Mid-Atlantic Area 66

New England Area 9

Other 4

**Other Areas Total** 683

**Grand Total** 1,899

**Table 3a.** Charter Vessels with Only the Coastal Migratory Pelagics Permit by Gulf States Port, January 2000.

**Alabama**

Orange Beach .....	3
<b>Total .....</b>	<b>3</b>

**Florida**

Big Pine Key .....	1
Fort Myers Beach .....	1
Homestead .....	1
Islamorada .....	36
Key Colony Beach .....	1
Key Largo .....	10
Key West .....	17
Marathon .....	7
Marco Island .....	1
Naples .....	5
Panama City .....	1
Panama City Beach .....	1
Placida .....	2
Port St. Joe .....	1
Sarasota .....	1
Steinhatchee .....	1
Summerland Key .....	1
Sugarloaf Key .....	1
Tampa .....	1
Tarpon Springs .....	1
Tavernier Key .....	6
<b>Total .....</b>	<b>97</b>

**Louisiana**

Cameron .....	4
Cocodrie .....	2
Cypremont Point .....	1
Golden Meadow .....	2
New Orleans .....	1
Port Fourchon .....	1
<b>Total .....</b>	<b>11</b>

**Mississippi**

Biloxi .....	3
Ocean Springs .....	1
<b>Total .....</b>	<b>4</b>

**Texas**

Aransas Pass .....	1
Galveston .....	1
Houston .....	1
Port Aransas .....	3
Port Isabel .....	1
South Padre Island .....	1
Spring .....	1
<b>Total .....</b>	<b>9</b>

<b><u>Gulf States Total .....</u></b>	<b><u>124</u></b>
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**Table 4.** Reef Fish Charter Vessel/Headboat Permits by Gulf States Port January 2000.

**Alabama**

Alabama Point	1
Bon Secour	1
Dauphin Island	15
Fairhope	3
Fort Morgan	1
Gulf Shores	1
Lillian	1
Mobile	5
Orange Beach	82
Perdido Beach	1
<b>Total</b>	<b>111</b>

**Florida**

Anna Maria	2
Apalachicola	5
Big Pine Key	2
Big Torch Key	2
Boca Grande	9
Bokeelia	2
Bonita Springs	2
Bradenton	7
Brooksville	2
Cantonment	1
Cape Coral	6
Carrabelle	13
Cedar Key	5
Chokoloskee	1
Clearwater	19
Clearwater Beach	6
Cortez	7
Crawfordville	2
Crystal River	5
Cudjoe Key	3
Destin	97
Dunedin	4
Englewood	11
Fort Myers	6
Fort Myers Beach	11
Fort Walton Beach	2
Gulf Breeze	4
Hernando Beach	3
Holmes Beach	3
Homosassa	1
Hudson	6

**Florida (cont'd)**

Indian Pass Beach	1
Indian Rocks Beach	3
Inglis	1
Islamorada	7
Keton Beach	1
Key Colony Beach	2
Key Largo	3
Key West	82
Largo	3
Little Torch Key	5
Lynn Haven	1
Madeira Beach	7
Marathon	32
Marco Island	16
Mary Esther	1
Mexico Beach	12
Milton	1
North Redington Beach	1
Naples	26
New Port Richey	2
Niceville	4
Nokomis	7
North Port	1
Odessa	1
Orange Park	1
Okaloosa Island	1
Palm Harbor	2
Panacea	3
Panama City	78
Panama City Beach	27
Pensacola	36
Pensacola Beach	3
Plant City	1
Port Richey	2
Port St. Joe	1
Punta Gorda	2
Ramrod Key	2
Reddington Shores	1
Sarasota	8
Seminole	5
Shalimar	1
South Pasadena	2
St. George Island	2
St. James City	4

**Florida (cont'd)**

St. Marks	1
St. Petersburg	18
St. Pete Beach	2
Steinhatchee	12
Sugar Loaf Key	8
Summerland Key	6
Sundance	1
Suwannee	4
Tallahassee	1
Tampa	5
Tarpon Springs	3
Tavernier	3
Terra Ceia	1
Treasure Island	4
Venice	6
Wewahitchka	1
Yankeetown	1
<b>Total</b>	<b>728</b>

**Louisiana**

Arnaudville	1
Cameron	1
Chauvin	18
Empire	1
Golden Meadow	1
Grand Chenier	1
Grand Isle	6
Gueydon	1
Houma	2
Lake Charles	1
Larose	1
Leeville	2
New Orleans	4
Pierre Park	1
Port Fourchon	6
Slidell	2
Venice	2
<b>Total</b>	<b>51</b>

**Mississippi**

Bay St. Louis	1
Biloxi	47
D'Iberville	1
Escatawpa	1
Gautier	1
Gulfport	8

**Mississippi (cont'd)**

Laurel	1
Long Beach	2
Ocean Springs	4
Pascagoula	3
<b>Total</b>	<b>69</b>

**Texas**

Alvin	1
Aransas Pass	10
Balboa	1
Crystal Beach	1
Deer Park	1
Freeport	37
Friendswood	1
Galveston	35
Helotes	1
Houston	21
Ingleside	3
Lake Jackson	2
Matagorda	2
Nederland	3
Port Aransas	52
Port Arthur	3
Port Isabel	2
Port Lavaca	1
Port Mansfield	5
Port O'Connor	15
Portland	1
Pottsboro	1
Rockport	1
Sabine Pass	2
Seabrook	1
South Padre Island	7
Surfside	2
<b>Total</b>	<b>212</b>

**Gulf States Total**                    **1,171****Other States Total**                    **32****Grand Total**                            **1,203**

**Table 4a.** Charter Vessels with Only the Reef Fish Permits by Gulf States Port January 2000.

**Alabama**

Dauphin Island	3
Mobile	1
Orange Beach	1
<b>Total</b>	<b>5</b>

**Florida**

Apalachicola	1
Big Pine Key	1
Boca Grande	2
Bokeelia	1
Bradenton	3
Brooksville	1
Cape Coral	1
Cedar Key	1
Chokoloskee	1
Clearwater	1
Crystal River	2
Destin	4
Englewood	1
Hernando Beach	1
Homosassa	1
Hudson	5
Islamorada	1
Key West	5
Largo	1
Madeira Beach	1
Marathon	4
Niceville	1
Nokomis	2
Palm Harbor	1
Panama City	5
Panama City Beach	2
Sarasota	2
Seminole	1
Shalimar	1
St. James City	2
St. Marks	1
St. Petersburg	4

**Florida cont'd**

St. Pete Beach	1
Steinhatchee	2
Suwannee	1
Tampa	2
Tarpon Springs	2
Wewahitchka	1
<b>Total</b>	<b>70</b>

**Louisiana**

Cameron	1
Grand Chenier	1
Grand Isle	1
New Orleans	1
Slidell	1
<b>Total</b>	<b>5</b>

**Mississippi**

Biloxi	3
<b>Total</b>	<b>3</b>

**Texas**

Balboa	1
Houston	1
Nederland	1
<b>Total</b>	<b>3</b>

**Gulf States Total** **86**

**Table 5.** Gulf of Mexico Landings of Red Snapper (1,000's of Fish) by Charter Vessel/Headboat Sectors and Percentage of Total Recreational Landing for 3 periods between 1981-1997.

Period	Average Total Landing	Charter Vessels		Headboats		For-Hire
		Average Landing	Percent of Total	Average Landing	Percent of Total	Percent of Total
1981/1982	2099	721	34.3	<sup>1/</sup>		34.3
1988/1989	<b>1097</b>	328	<b>27.4</b>	411	<b>34.3</b>	<b>61.7</b>
1996/1997	1363	577	42.3	387	28.4	70.7

**Source:** Schirripa (1998)

<sup>1/</sup> Headboat landings are combined with charter vessel landings under MRFSS.

**Table 6.** Gulf of Mexico Recreational Landings of King Mackerel (1,000's of fish) by Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 1983, 1988, and 1997.

Year	Total Landings		Charter Vessels		Percent of Total	Headboats		Percent of Total
	# Fish	% S.D.	Landings			# Fish	Percent of Total	
			# Fish	% S.D.				
1983	262.4	34	45.8	25	17.4	<sup>1/</sup>		17.4
1988	354.7	<sup>2/</sup> 10	103.4	22	29.2	9.4	2.6	31.8
1997	575.0	<sup>2/</sup> 7	332.8	9	57.8	21.5	3.7	61.5

**Source:** Holiman (1999)

<sup>1/</sup> Headboat landings are combined with charter vessel landings under MRFSS.

<sup>2/</sup> Percent Standard Deviation based on MRFSS' component of total landings.

**Table 7.** Gulf of Mexico Recreational Landings of Gag Grouper (1,000's of fish) By Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 3 Periods Between 1981 and 1996.

Period	Average Total Landing	Charter Vessels		Headboats		For-Hire
		Average Landing	Percent of Total	Average Landing	Percent of Total	Percent of Total
1981/1982	334	48.5	14.5	<sup>1/</sup>		14.5
1988/1989	486	73.5	15.1	31	6.3	21.4
1995/1996	361	101	28.0	17	4.7	32.7

**Source:** Schirripa and Legault (1997)

<sup>1/</sup> Headboat landings are combined with charter vessel landings under MRFSS.

**Table 8.** Gulf of Mexico Landings of Vermilion Snapper (1,000's of fish) By Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 3 Periods Between 1981 and 1996.

Period	Average Total Landing	Charter Vessels		Headboats		For-Hire
		Average Landing	Percent of Total	Average Landing	Percent of Total	Percent of Total
1981/1982	342	281	82.2	<sup>1/</sup>		82.2
1988/1989	<b>1229</b>	334	<b>27.1</b>	654	<b>53.0</b>	<b>80.1</b>
1995/1996	883	424	48.0	372	42.1	90.1

**Source:** Schirripa (1998)

<sup>1/</sup> Headboat landings are combined with charter vessel landings under MRFSS.

**Table 9.** Gulf of Mexico Recreational Landings of Greater Amberjack (1,000's of Fish) By Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 3 Periods Between 1982-1996

Period	Average Total Landings	Charter Vessels		Headboats		For-Hire
		Average Landings	Percent of Total	Average Landings	Percent of Total	Percent of Total
1982/1983	306.0	203.5	66.5	<sup>1/</sup>		66.5
1988/1989	458.4	208.7	45.5	41.1	9.0	54.5
1995/1996	73.0	36.6	50.1	9.6	13.1	63.2

**Source:** Holiman (1998)  
McClellan and Cummings (1996)

<sup>1/</sup> Headboat landings are combined with charter vessel landings under MRFSS.

**Table 10.** Gulf of Mexico Recreational Landings of Red Grouper (1,000's of Fish) By Charter Vessel and Headboat Sectors and Percentage of Total Recreational Landing for 3 Periods Between 1981-1997

Period	Average Total Landings	Charter Vessels		Headboats		For-Hire
		Average Landings	Percent of Total	Average Landings	Percent of Total	Percent of Total
1981/1982	240	46.5	19.4	<sup>1/</sup>		19.4
1988/1989	782	67.0	8.6	39.5	5.1	13.7
1996/1997	122	28.5	23.4	10.0	8.2	31.6

**Source:** Schirripa, et al (1999)

<sup>1/</sup> Headboat landings are combined with charter vessel landings under MRFSS

**Table 11.** Vessels holding both Reef Fish and Coastal Migratory Pelagic Charter Vessel Permits by Gulf States Port August 2000.

**Alabama**

Alabama Point	1
Bon Secour	1
Daphne	1
Dauphin Island	19
Fairhope	2
Fort Morgan	2
Gulf Shores	2
Lillian	1
Mobile	5
Ono Island	1
Orange Beach	93
Perdido Beach	1
<b>Total</b>	<b>129</b>

**Florida**

Anna Maria	2
Apalachicola	8
Big Pine Key	2
Big Torch Key	3
Boca Grande	10
Bokeelia	1
Bonita Springs	3
Bradenton	5
Brooksville	1
Cantonment	1
Cape Coral	6
Carrabelle	20
Cedar Key	5
Clearwater	20
Clearwater Beach	5
Cortez	6
Crawfordville	1
Crystal River	6
Cudjoe Key	6
Destin	124
Duck Key	1
Dunedin	4
Eastpoint	1
Ellenton	1
Englewood	12
Fort Myers	7

**Florida (cont'd)**

Fort Myers Beach	11
Fort Walton Beach	3
Gainesville	1
Goodland	1
Gulf Breeze	4
Hernando Beach	1
Holmes Beach	5
Horseshoe Beach	2
Homestead	1
Hudson	4
Indian Pass Beach	1
Indian Rocks Beach	5
Inglis	1
Islamorada	6
Keton Beach	1
Key Colony Beach	2
Key Largo	3
Key West	87
Largo	2
Little Torch Key	5
Lynn Haven	1
Madeira Beach	8
Marathon	37
Marco Island	19
Mary Esther	1
Melrose	1
Mexico Beach	10
Milton	1
Naples	35
Navarre	1
New Port Richey	4
Niceville	5
Nokomis	7
North Port	1
North Redington Beach	1
Ochlockonee Bay	1
Odessa	2
Orange Park	1
Okaloosa Island	1
Palmetto	1
Palm Harbor	3

**Florida (cont'd)**

Panacea	6
Panama City	84
Panama City Beach	35
Pensacola	45
Pensacola Beach	3
Perdido	1
Plant City	1
Port Richey	4
Port St. Joe	1
Punta Gorda	2
Ramrod Key	2
Reddington Beach	2
Reddington Shores	1
Sarasota	19
Seminole	5
Shalimar	2
South Pasadena	2
St. George Island	1
St. James City	2
St. Petersburg	18
St. Pete Beach	4
Steinhatchee	11
Sugar Loaf Key	8
Summerland Key	7
Sundance	1
Suwanee	3
Tallahassee	2
Tampa	8
Tarpon Springs	4
Tavernier	2
Terra Ceia	1
Treasure Island	6
Venice	8
Wewahitchka	1
Yankeetown	1
<b>Total</b>	<b>851</b>

**Louisiana**

Baton Rouge	1
Chauvin	23
Cocodrie	2
Cut Off	1
Cyprenort Point	1
Empire	2

**Louisiana (cont'd)**

Galliano	1
Golden Meadow	4
Grand Isle	9
Gueydon	1
Houma	3
Lake Charles	2
Larose	1
Leeville	1
Manderville	1
Mer Rouge	1
New Orleans	4
Pierre Park	1
Port Fourchon	8
Slidell	2
Venice	3
<b>Total</b>	<b>72</b>

**Mississippi**

Biloxi	63
D'Iberville	1
Escatawpa	1
Gautier	1
Gulfport	12
Laurel	1
Long Beach	4
Ocean Springs	4
Pascagoula	3
<b>Total</b>	<b>90</b>

**Texas**

Alvin	2
Aransas Pass	12
Balboa	1
Baytown	1
Corinth	1
Corpus Christi	1
Crystal Beach	1
Deer Park	1
Dickinson	1
Freeport	48
Friendswood	1
Galveston	40
Helotes	1
Houston	26

**Texas (cont'd)**

Huffman	1
Kingsbury	1
Lake Jackson	2
Matagorda	4
Nederland	2
Padre Island	1
Pasadena	1
Pearland	1
Port Aransas	53
Port Arthur	1
Port Isabel	6
Port Mansfield	5
Port O'Connor	25
Portland	2
Pottsboro	1
Rockport	3
Sabine Pass	2
San Leon	1
Seabrook	1
South Padre Island	7
Surfside	3
The Woodlands	1
<b>Total</b>	<b>261</b>

**Gulf States Total** ..... **1,403**

**Table 11a.** Charter Vessels with Only the Reef Fish Permits by Gulf States Port August 2000.

**Alabama**

Dauphin Island	5
Foley	1
Orange Beach	2
<b>Total</b>	<b>8</b>

**Florida**

Apalachicola	1
Big Pine Key	1
Boca Grande	1
Bokeelia	2
Bradenton	4
Brooksville	1
Cape Coral	1
Cedar Key	3
Clearwater	1
Cortez	1
Crystal River	3
Destin	2
Dunedin	1
Eastpoint	1
Fort Myers	1
Fort Myers Beach	1
Hernando Beach	1
Homosassa	1
Horseshoe Beach	1
Hudson	4
Islamorada	1
Key West	2
Largo	1
Madeira Beach	5
Marathon	9
Marco Island	1
Niceville	1
Palmetto	1
Panacea	2
Panama City	3
Panama City Beach	1
Pensacola	1
Sarasota	4
Seminole	1
Shalimar	1
Springhill	2

**Florida (Cont'd)**

St. James City	1
St. Marks	1
St. Petersburg	4
Steinhatchee	1
Suwannee	1
Tallahassee	1
Tampa	1
Tarpon Springs	3
Venice	2
Wewahitchka	1
<b>Total</b>	<b>84</b>

**Louisiana**

Arnaudville	1
Cameron	1
Dulac	2
Grand Chenier	1
Grand Isle	3
Metairie	1
Slidell	1
Venice	1
<b>Total</b>	<b>11</b>

**Mississippi**

Biloxi	2
<b>Total</b>	<b>2</b>

**Texas**

Beaumont	1
Galveston	1
Houston	1
Nederland	1
Port Arthur	1
Port O'Connor	2
<b>Total</b>	<b>7</b>

**Gulf States Total** **112**

**Table 11b.** Charter Vessels with Only the Coastal Migratory Pelagics Permit by Gulf States Port, August 2000.

**Alabama**

Orange Beach .....	3
<b>Total .....</b>	<b>3</b>

**Florida**

Apollo Beach .....	1
Big Pine Key .....	2
Big Torch Key .....	1
Duck Key .....	1
Fort Myers Beach .....	1
Goodland .....	1
Islamorada .....	40
Key Colony Beach .....	1
Key Largo .....	13
Key West .....	18
Marathon .....	12
Marco Island .....	1
Mexico Beach .....	1
Panama City .....	2
Panama City Beach .....	1
Port St. Joe .....	2
Sarasota .....	1
Steinhatchee .....	1
Summerland Key .....	3
Sugarloaf Key .....	1
St. Petersburg .....	1
Tarpon Springs .....	1
Tavernier .....	7
<b>Total .....</b>	<b>113</b>

**Louisiana**

Cameron .....	4
Cocodrie .....	1
Hackberry .....	1
Port Fourchon .....	1
Venice .....	1
<b>Total .....</b>	<b>8</b>

**Mississippi**

Ocean Springs .....	1
<b>Total .....</b>	<b>1</b>

**Texas**

Aransas Pass .....	1
Galveston .....	1
Houston .....	3
Port Aransas .....	3
Port O'Connor .....	1
Spring .....	1
<b>Total .....</b>	<b>10</b>

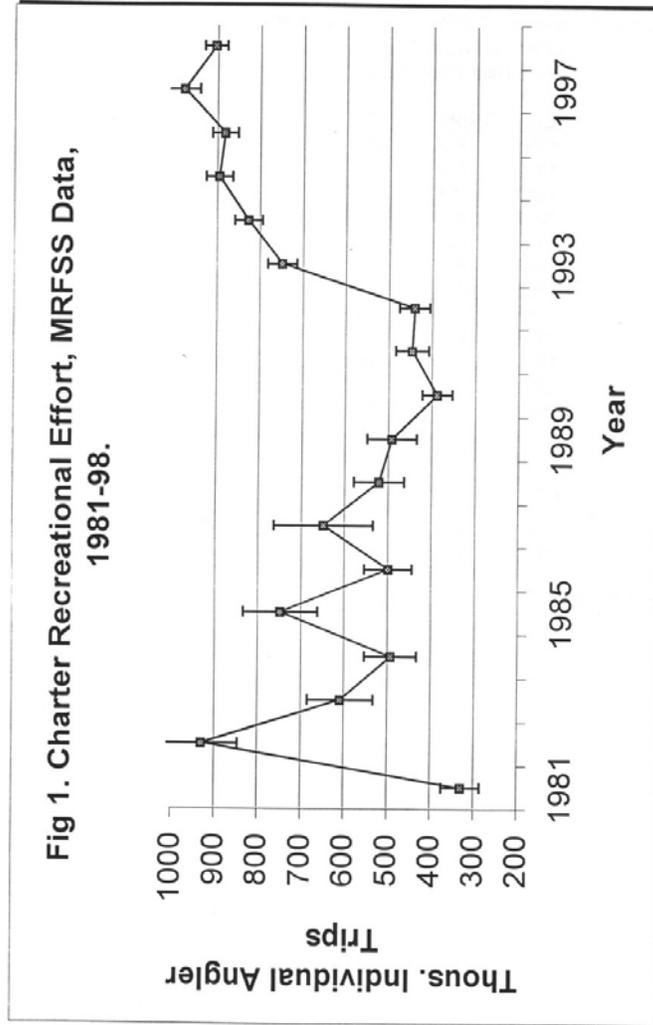
**Gulf States Total .....** **135**

**Table 12.** Red Snapper Recreational Landings (thousands of pounds)

<b>YEAR</b>	<b>SHORE MODE</b>	<b>PRIVATE/RENTAL</b>	<b>CHARTER/PARTY</b>	<b>TOTAL</b>
1981	0	5926	572	6498
1982	0	1575	2193	3768
1983	22	3800	2543	6365
1984	15	477	1144	1636
1985	13	637	848	1498
1986	1	<b>846</b>	<b>2357</b>	3204
1987	9	<b>742</b>	<b>2631</b>	3382
<b>1981-1987 Subtotal</b>	<b>60</b>	<b>14003</b>	<b>12288 (46.6%)</b>	<b>26351</b>
1988	12	<b>843</b>	<b>1662</b>	2517
1989	103	746	1287	2136
1990	119	460	677	1256
<b>1981-1990 Subtotal</b>	<b>294</b>	<b>16052</b>	<b>15914 (49.3%)</b>	<b>32260</b>
1991	22	714	1205	1941
1992	0	1412	1575	2987
1993	12	1683	3199	4894
1994	12	1425	2648	4085
1995	0	1257	2099	3356
1996	0	1219	2598	3817
1997	0	1774	3755	5529
1998	0	1083	4835	5918
<b>1981-1998 Subtotal</b>	<b>340</b>	<b>26619</b>	<b>37828 (58.4%)</b>	<b>64787</b>
<b>1991-1998 Subtotal</b>	<b>46</b>	<b>10567</b>	<b>21914 (67.4%)</b>	<b>32527</b>
<b>1986-1988 Subtotal</b>	<b>22</b>	<b>2431</b>	<b>6650 (73.1%)</b>	<b>9103</b>

Source: Schirripa and Legault (1999) Table 21 with values corrected for Texas landings based on Osburn (1999) Personal Communications dated October 29, 1999.

16.0 FIGURES



# APPENDIX A

## Alternatives Proposed by Mr. Fensom for a Permit Moratorium Program

- A. Duration of Moratorium
- \*1. Establish a 5-year moratorium on the issuance of charter vessel permits with an effective date of January 1, 2002.
  - \*2. New permits will not be issued on or after the effective date of January 1, 2002.
- B. A New Gulf Permit for the Reef Fish and Coastal Migratory Pelagics Fisheries
- \*1. Create a new charter vessel/head boat permit for the Gulf EEZ which will consist of only one class of vessels.
  - 2. Vessels will have endorsements for the following fisheries:
    - a. Reef fish; and
    - b. Coastal migratory pelagics.
  - 3. Vessel decals for permitted vessels will be required.
- C. Initial Eligibility Requirements for Permits and/or Endorsements
- \*1. Provide a fully transferable endorsement to the vessel permit for reef fish and/or coastal migratory pelagic fisheries to vessel owners who held a charter vessel permit for either fishery on January 1, 2002.
- D. Annual Permit and Endorsement Transfers During the Moratorium
- 1. The transfer of permits/endorsements is allowed with or without transfer of the vessel.
- E. Vessel Passenger Restriction on Permit Transfer
- 1. Transfer of permits is allowed between vessels but without any increase in the number of passengers that can legally be carried under the U.S. Coast Guard Safety Certification, i.e., can be transferred to vessels certified to carry equal or fewer passengers.
- F. Annual Reissuance of Permits Not Renewed (or Permanently Revoked)
- 1. Permits not renewed (or permanently revoked) will not be reissued by NMFS during the moratorium.
- G. Appeals Process under the Moratorium
- \*1. New permits will not be issued on or after January 1, 2002, and there is no appeals process.
- H. Requirements to Maintain the New Gulf Permit/Endorsement
- \*1. The fishing history of the permit/endorsements is transferred upon sale or transfer.
  - 2. All vessels holding a Gulf charter vessel permit and endorsement must register for participation in one of the following surveys:
    - a. Pilot charter boat survey;
    - b. TPWD recreation fishing survey; or
    - c. NMFS Buford head boat survey.
    - d. Trip log.
  - 3. When selected, the owner or captain must report fishing statistics.

4. Failure to participate in the approved surveys will result in the permits and endorsements not being reissued by NMFS the following year.
- \*5. Gross income of \$20,000 - \$25,000 per year from recreational for-hire fishing or an average of \$20,000 - \$25,000 per year for the three years immediately prior to renewal.

\*New alternatives

## APPENDIX B

### Alternatives Proposed by Ms. Walker for a Permit Moratorium Program

**Moratorium ONLY on charter/headboat permits. Require only permits and/or endorsements and NO moratorium for guide boats.**

#### Definitions:

**Charter boat/ Headboat-** vessel permitted to carry 5 or more recreational fishermen.

**Guide Boat-** Inshore or near shore vessel carrying no more than 4 recreational fishermen.

**Historical Captain-** is a U.S. Coast Guard licensed captain who has operated a for-hire fishing vessel in the Gulf of Mexico as a USCG licensed captain prior to 9/13/00 and did not own his own vessel or have a permit issued in his name.

#### Section A: **Duration of moratorium**

**A (1)** - 3 years. Will expire 3 years after implementation or expire automatically should the red snapper season be shortened, bag limits decreased or size limits increased.

#### Section B: **A new Gulf Permit for Charter/Headboat Vessels with Coastal Migratory Pelagic and Reef Fish endorsements. A new Guide boat Permit.**

**B (1)** Create a new charter vessel/headboat permit for the Gulf EEZ, which will include endorsements for the following fisheries: reef fish, coastal migratory pelagic, and any other fishery endorsement created in the future. A vessel decal for permitted vessels will be required.

**B (2)** Create a new Guide boat Permit for vessels carrying 4 or less recreational fishermen which will include endorsements for the following fisheries: reef fish, coastal migratory pelagic, and any other fishery endorsement created in the future. A vessel decal for permitted vessels will be required.

#### Section C: **Initial Eligibility Requirements for Charter/Headboat Permits and/or endorsements. Initial Eligibility Requirements for Guide boat Permits.**

##### **C (1)- Charter/Headboat Permits**

All vessel owners who can demonstrate through records (including, but not limited to, individual, business, corporate, and/or partnership tax returns) they have been in a Gulf or Gulf state recreational for-hire fishery in one of the past 3 years, (prior to 9/13/00), and/or have obtained a charter vessel permit by September 13, 2000 are eligible for a Charter/Headboat Permit. Same requirement for historical captains who wish to obtain permits and/or endorsements.

**C (1) (a)-** Any person who can demonstrate to NMFS that they had a charter vessel under construction prior to 9/13/00 will be eligible for a permit and/or endorsement for the vessel under construction. In order to receive the permit and/or endorsements the

boat owner will provide to NMFS a copy of the contract dated prior to September 13, 2000 and/or receipts dated prior to 9/13/00 for expenditures of at least \$5,000.00 for a boat contracted for or under construction.

**C (1) (b)- Charter/Headboat Permit Endorsements**

Can demonstrate they have applied for or held a reef fish and/or coastal migratory pelagic permit, dated prior to 9/13/00. Qualification for permit under new boat construction or historical captain will qualify owner for endorsements.

**C (2)- Guide boat Permits and Endorsements**

Apply to NMFS for permit and include all information necessary for inclusion in one of the currently approved fishery data surveys.

**Section D: Charter/Headboat Annual Permit and Endorsement Transfers During the Moratorium**

**D (1)-** All permits and/or endorsements will be fully transferable during the moratorium with the exception of historical captain permits.

**D (2)-** The historical captain permit can only be used on a vessel owned by the historical captain.

**Section E: Charter/Headboat Vessel Passenger Restriction on Permit Transfers**

**E (1)** Transfer of permits is allowed between vessels but without any increase in the number of passengers that can legally be carried as listed on the vessels Certificate of Inspection or what the vessel was listed to carry as of 9/13/00, whichever is greater.

**Section F: Annual Re-issuance of Permits Not Renewed (or Permanently Revoked)**

**F (1)-** Permits not renewed (or permanently revoked) will be reissued by NMFS from list of applicants.

**Section G: Appeals Process Under Moratorium**

**G (1)-** Create an appeals board to only resolve issues related to the NMFS permit office records that pertain to eligibility to retain or obtain a permit to participate in the fisheries.

**Section H: Permit and/or Endorsement Renewal Conditions**

**H (1)-** All vessels holding charter/headboat or guide boat permits will be included in the active sampling frame for one of the approved fishing data surveys, which currently are:

1. Charter Boat Survey
2. Texas Parks and Wildlife Recreation Fishing Survey
3. NMFS Beaufort Headboat Survey.

**H (2)-** Permits and endorsements shall be renewed three years from their anniversary date by complying with H (1).

## **APPENDIX C**

### **SUPPLEMENTAL REGULATORY IMPACT REVIEW AND REGULATORY FLEXIBILITY ACT ANALYSIS FOR THE CORRECTED AMENDMENT FOR A CHARTER VESSEL/HEADBOAT PERMIT MORATORIUM AMENDING THE FISHERY MANAGEMENT PLANS (FMPS) FOR: REEF FISH (AMENDMENT 20) AND COASTAL MIGRATORY PELAGICS (AMENDMENT 14)**

The National Marine Fisheries Service (NMFS) promulgated the charter moratorium regulations (67 FR 43558, June 28, 2002) to implement Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Gulf of Mexico Fishery Management Council (Council). Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations. In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendments, and to fully comply with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, NMFS implemented an emergency rule (ER) extending certain critical dates of the moratorium program and is submitting a corrected amendment (Amendment) to address this error and, as such, to reflect the actions approved by the Council. Specifically, the Amendment will establish the effective date of the moratorium as the date the Amendment is implemented and eliminate one eligibility criteria in the final rule. This document contains a description and discussion of the expected impacts associated with these two actions.

#### **1.0 Regulatory Impact Review**

##### **1.1 Introduction**

NMFS requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: (1) it provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; (2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem; and (3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

The RIR also serves as the basis for determining whether any proposed regulations are a "significant regulatory action" under certain criteria provided in Executive Order 12866 and whether the proposed regulations will have a "significant economic impact on a substantial number of small business entities" in compliance with the Regulatory Flexibility Act of 1980 (RFA).

This RIR analyzes the probable impacts on fishery participants of the proposed plan amendment to the Reef Fish and Coastal Migratory Pelagics Fishery Management Plans.

## **1.2 Problems and Objectives**

The general problems and objectives are found in Sections 3.0 and 4.0 of the Amendment. The purpose and need for the current plan amendment are found in Section 3.0 of the Amendment. In general, the purpose of this action is correct an error in the original moratorium amendment to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium.

## **1.3 Methodology and Framework for Analysis**

This RIR assesses management measures from the standpoint of determining the resulting changes in costs and benefits to society. To the extent practicable, the net effects should be stated in terms of producer and consumer surplus, changes in profits, employment in the direct and support industries, and participation by anglers. For the fisheries covered by the proposed action, however, this information generally does not exist. Therefore, the impacts of the proposed action are described in terms of the number of affected entities, average receipts, anglers, and angler expenditures.

In addition to changes in the surpluses mentioned above, there are public and private costs associated with the process of changing and enforcing regulations on the reef fish fishery. A simple estimation of these costs is made in this document.

## **1.4 Impacts of Management Measures**

The discussions of the impacts of the entire suite of proposed actions of the original amendment are provided in Section 6.0 and Section 7.0 of the Amendment. The following discussion will focus exclusively on the impacts of (1) modification of the effective date of the moratorium, and (2) alteration of the eligibility requirements. A summary of the impacts is developed in Subsection 1.6 below.

### **1.4.1 Duration of the Moratorium**

**Proposed Alternative: Establish a 3-year moratorium on the issuance of charter/headboat (for-hire) vessel permits, unless sooner replaced by a comprehensive limited access system. Effective the date that this amendment is implemented.**

**Alternative 1: Status Quo - Establish a 3-year moratorium on the issuance of charter/headboat (for-hire) vessel permits, unless sooner replaced by a comprehensive limited access system. Effective July 29, 2002, the effective date of the original final rule.**

Socioeconomic Impacts: The sole structural difference between the two alternatives is the effective date of the 3-year moratorium, as the duration of the moratorium is unchanged. Therefore, the

impacts of a 3-year moratorium are as described in Section 6.1 of the Amendment. The ER, however, extended by 180 days from the date of publication of the ER the date a limited access permit would be required for participation in the Gulf of Mexico reef fish or coastal migratory pelagics for-hire fisheries, and the date of expiration of all open access permits. The ER can be extended for at most an additional 180 days. Each day that the fisheries operate under the ER reduces the effective period of the moratorium duration. Thus, while the proposed action will establish a 3-year moratorium, the potential exists that, should the ER be extended, under the status quo the effective moratorium period could be reduced to approximately 2 years (3 years minus 360 days). The effective period of the moratorium for the proposed action would, therefore, be approximately one year longer than the effective period of the moratorium under the status quo.

Decreasing the effective period of the moratorium affects several different aspects of the fishery and business operation, such as (1) the effective period during which the need for a more comprehensive limited access system can be evaluated and implemented, if necessary, is reduced; (2) the natural turnover in the fishery is reduced; (3) the planning horizon for participants is reduced; (4) the period of protection from increased competition is reduced; and (5) the period of exclusion of new entrance is reduced. It is unlikely that complete evaluation of the fishery and development and implementation of a more comprehensive limited access system, if appropriate, could be completed in two years. In similar circumstances for other fisheries, the regulations have been extended for the required time, so such would likely occur for this fishery. The rationale for extension is that allowing the fishery to revert to its former state (open access) would create excessive pressure on the resource and instability in the fishery (current participants could face substantial business disruption from increased competition from new entry, and new entrants would likely be ultimately forced out under the subsequent limited access program). Extension of the moratorium may also be required under a 3-year duration to avoid similar problems. At the very least the shorter duration reduces the flexibility of management to evaluate subsequent options. However, the only additional costs that should occur should be those that accrue to management to fund the regulatory process of extending the moratorium.

Reducing the effective period of the moratorium will reduce the total natural turnover in the fishery since fewer vessels would be expected to leave the fishery in the shorter period. The for-hire fishery, like any industry, exhibits a natural turnover rate of participants due to a variety of reasons including, but not limited to, retirement, illness or injury, poor economic performance, and superior alternative opportunities. Assuming turnover is proportionate to length of time, fewer participants would be expected to exit the fishery during over 2 years than over 3 years. While the existence of the moratorium program itself is expected to alter turnover relative to the open access fishery on the rationale that some participants may remain in the fishery longer than they naturally would to maximize the potential value of their permit as a marketable asset, it still stands to reason that fewer participants would exit the fishery during a shorter moratorium relative to a longer moratorium. The primary effects of participants staying in the fishery longer than they normally would are that (1) they are delayed from receiving the benefits from their alternative option; and (2) new participants are delayed from entering the fishery through the purchase of existing permits. The impacts of these effects can not be determined since it can not be determined how many current participants and potential entrants this might affect, nor is it known what the alternatives (and their accompanying

values) exist for these persons. The net impacts of this delay are not expected to be substantial, however, since normal turnover should not be great. As discussed in the original action, Sutton et al. (1999) noted that 87 percent of charter vessel operators and 86 percent of party boat operators in Alabama through Texas thought they would still be in business in three years, while Holland et al. (1999) reported that 93 percent of charter and party boat operators in Florida reported similar expectations.

A reduction in the planning horizon has an unquantifiable impact on both fishing participants and prospective entrants, similar to those impacts discussed with regards to turnover. The shorter horizon could cause the participant to either delay or accelerate certain business decisions over what would otherwise be made. While the impacts of this are not necessarily negative, reducing the flexibility of business decision is not a positive outcome from the business management perspective.

From the perspective of permit qualifiers, decreasing the effective period of the moratorium would reduce the period of protection from increased competition should the moratorium revert back to open access. From the perspective of entities wishing to enter the fishery, the period of exclusion other than through purchase of an existing permit is reduced, again assuming the moratorium is replaced with open access. Should the moratorium be extended or replaced with at least an equally restrictive limited access program, the period of protection and period of exclusion is maintained. Only qualitative assessments of the impacts of protection or exclusion are possible. Under a longer moratorium, qualifiers are able to continue to receive the benefits of greater demand for their services (this assumes an increasing demand for services spread over a constant number of vessels), possibly resulting in higher prices to the customer. To the degree that the fishery is overcapitalized and/or the fish stocks are under excessive pressure, however, under the moratorium stock pressure is reduced or at least contained and services are provided in an economically efficient manner. Should the moratorium qualifiers represent an overcapitalized level of effort, quicker transition to an alternative system might allow faster attainment of the preferred level of effort.

Overall, the effective length of the moratorium has implications on the economic behavior of qualifiers and prospective entrants, as well as subsequent community effects in the respective fishing communities. Quantitative assessment of these impacts is not possible, however. Further, the functional difference between a two-year moratorium and a three-year moratorium is not great considering that both are subject to subsequent extension (until replaced by a more comprehensive limited access program) based on a determination of whether the required assessment and implementation of the comprehensive limited access program can be completed in the available time. So, with regards to the effective length of the moratorium, significant differences are not obvious.

Delay of the effective implementation of the moratorium, however, from the original effective date and the continued issuance of open access for-hire permits may have resulted in an increase in the number of participants that will subsequently be excluded from the fishery upon expiration of the ER and/or implementation of the proposed action. As of March 7, 2002, an additional 595 reef fish or coastal migratory pelagic permits had been issued for the for-hire fishery since the March 2001 control date. These permits would ostensibly be for vessels that would have been excluded from the

fishery upon implementation of the original final rule. However, an unknown portion of these permits may have been purchased by individuals who would have qualified under the moratorium provisions (notably, the historical captain and vessel-under-construction provisions). As of January 14, 2003, this total increased to 882 permits, for an increase of 287 permits. As with the March 2002 total, it is not possible to determine how many of these permits represent new entry as opposed to vessels that would qualify under the moratorium provisions. Since those new entrants represented by the March 2002 total would have been excluded by the provisions of the original final rule, the new focus is on the additional 287 permits that have been issued since then. Net adverse impacts of exclusion from the fishery upon expiration of the ER or implementation of the proposed rule can not be estimated since it is not possible to determine how knowledge of the pending exclusion was factored into the business decision. Since there has been common industry knowledge of the moratorium and subsequent exclusion of non-qualifiers, it must logically follow that new entrants factored this information into their business plan. As such, future exclusion/exit should have been part of the business plan of these entities. Further, entry into the current fishery by some of these entities may have been part of their plan to gain experience for subsequent use upon purchase of an existing permit. Thus, some of these permits may have been purchased by individuals who would ultimately qualify for a permit, some by those who expected only short-term participation in the fishery, some who expected to subsequently purchase an existing moratorium permit, and some who simply hope subsequent developments might allow them to continue participation.

#### **1.4.2 Initial Eligibility Requirements for Permits and/or Endorsements**

**Proposed Alternative: Provide a fully transferable permit and endorsements to the following:**

- 1. Provide for fully transferrable reef fish or coastal migratory pelagic charter/headboat permits to individuals/charter vessels who held valid permits on March 29, 2001, or held a valid permit during the preceding year or had applied for such permits received in the NMFS office by March 29, 2001 (03/29/01).**
- 2. Any person who can demonstrate to NMFS they had a charter/headboat (for-hire) vessel under construction prior to 03/29/01 with copy of contract and/or receipts for expenditures of at least \$5,000.00.**
- 3. Provide for Historical Captain Permits as follows:  
Any U.S. Coast Guard licensed captain, who can demonstrate to NMFS, they were licensed by the USCG and operated, (as a Captain), a for-hire fishery permitted vessel prior to 03/29/01, but did not have a fishery permit issued in their name, and who must qualify for the permit within 90 days of implementation of the final rule for this amendment and who must demonstrate at least 25 percent of their earned income came from recreational for-hire fishing in 1 of the last 4 years ending with 03/29/01. They will be issued a letter of eligibility to be replaced by permit/endorsements to be used only on a vessel that they operate as a captain.**

**Alternative 1: Status Quo - Allow the fishery to continue operation under the moratorium by the original final rule that became effective July 29, 2002, with the following eligibility criteria:**

- 1. Provide a fully transferrable permit to vessels who obtained or have applied for reef fish and/or coastal migratory pelagic for-hire permits on or before 03/29/01.**
- 2. Provide a fully transferrable permit to any person who can demonstrate to NMFS they had a charter/headboat (for-hire) vessel under construction prior to 03/29/01 with copy of contract and/or receipts for expenditures of at least \$5,000.00.**
- 3. Provide for Historical Captain Permits as follows:  
Any U.S. Coast Guard licensed captain, who can demonstrate to NMFS, they were licensed by the USCG and operated, (as a Captain), a for-hire fishery permitted vessel prior to 03/29/01, but did not have a fishery permit issued in their name, and who must qualify for the permit within 90 days of implementation of the final rule for this amendment and who must demonstrate at least 25 percent of their earned income came from recreational for-hire fishing in 1 of the last 4 years ending with 03/29/01. They will be issued a letter of eligibility to be replaced by permit/endorsements to be used only on a vessel that they operate as a captain.**

Socioeconomic Impacts: The sole difference between the two alternatives lies in the first provision of each alternative and deals with vessels operational in the fishery prior to the March 29, 2001, control date. This provision addresses the primary qualification criteria, as the majority of qualifiers would be a member of this group. The different specifications of the alternatives have substantial impacts on the number of qualifiers. Under the status quo, 2,136 vessels would qualify for the for-hire moratorium permit in the Gulf of Mexico for-hire fleet to hold either only the Coastal Migratory Pelagic (CMP) for-hire permit (664 vessels), only the Reef Fish (RF) permit (99 vessels), or both permits (1,373 vessels), plus an indeterminate number of qualifiers under the historical captain and vessel-under-construction provisions of the program. Under the proposed action, 3,071 vessels would qualify for a moratorium permit, or a difference of 935 more vessels, plus an unknown number of qualifiers under the historical captain and vessel-under-construction provisions. Of these 3,071 vessels, 1,917 vessels would qualify for both permits, 974 vessels would qualify for the CMP permit, and 180 vessels would qualify for the RF permit. By permit category, the proposed action would allow qualification of 544 more vessels for both permits, 310 more vessels for the CMP, and 81 more vessels for the RF permit over the status quo. It should be noted that these 935 qualifiers are vessels that were originally intended to qualify for inclusion in the fishery and do not represent new entry. Their exclusion was only due to errors in the original rule. The status quo would therefore preclude approximately 30 percent of the historic legitimate vessels from continued participation in the fishery.

Exclusion of these participants from the for-hire fishery would have significant socioeconomic impact on the fishery. Precise estimates of the average revenues and profits per vessel do not exist. Sutton et al. (1999) estimated that the average annual receipts of charter vessels amount to about \$82,000 in Alabama, \$64,000 in Louisiana, \$52,000 in Mississippi, and \$72,000 in Texas. The estimated average annual receipts for party boats in Alabama through Texas are approximately \$141,000. These numbers are likely severely understated, since nearly 70 percent of the sample respondents indicated gross revenues in the questionnaire's top category of \$150,000 or more annually. Holland et al. (1999) reported that in Florida the average annual receipts of charter vessels total \$56,000 (\$68,000 using an alternative method based on base passenger price, average

passenger load and total trips) and those of headboats, \$140,000 (\$324,000 using the alternative method).

The distribution of the additional vessels that would qualify for the moratorium permit across state of operation or vessel type (charter vs. partyboat/headboat) is unknown. It is, therefore, necessary to generate an estimate of an average receipt value that can be applied across all states and vessel type. Combining all estimates for all states, assuming the partyboat/headboat fleet is approximately two percent of the fleet, and applying the percent increases generated by the alternative method utilized for the Florida data (an increase of 21 percent for charter vessels and 131 percent for partyboat/headboat vessels) to the estimates for the other states, the average annual receipts for a for-hire vessel in the Gulf of Mexico is estimated to range from \$64,000-\$80,000, using the alternative estimation methodologies (reported vs. calculated using base passenger price, average passenger load, and total trips). The proposed action would support the generation of \$196.5-\$245.7 million in annual receipts (3,071 vessels\*\$64,000-\$80,000 per year), whereas the status quo regulations would support the generation of \$136.7-\$170.9 million in annual receipts (2,136 vessels\*\$64,000-\$80,000 per year). The proposed action would, therefore, support an increase of \$59.8-\$74.8 million in annual receipts over the status quo. It should be noted, however, that the proposed action will support continuation of historical performance of the fishery rather than an actual increase. The superior outcome of the proposed action is with regards to conditions that will occur in the status quo under full implementation of the original moratorium rule.

In addition to the lost revenues, assuming fishing platform opportunities are uniformly distributed across qualifying and non-qualifying vessels, the status quo will result in a loss of 29 percent of fishing platform opportunities for recreational anglers. In 2001, for the Florida-Louisiana charter fishery alone (comparable estimates are not available for the partyboat or Texas fisheries), approximately 742,000 charter angler trips were taken. A loss of 30 percent of fishing platform opportunities, assuming fishing could not be transferred to other vessels, could result in the loss of approximately 223,000 angler trips. The average expenditure for all expenses other than for-hire fees (travel, food, lodging, etc.) for Gulf charter anglers in 1997 was \$337. While it is not possible to determine whether the loss of a for-hire fishing opportunity will result in cancellation of the entire trip, these 223,000 trips represent over \$75 million in total expenditures potentially lost due to the loss of fishing platform opportunities if it took one year to implement a new amendment. These lost revenues would have additional negative impacts on the communities in which they would otherwise occur. The proposed action will eliminate these losses and adverse impacts.

Although it is not possible to quantify the extent, it should be noted that a certain amount of mitigation of the status quo losses would be expected to occur as a result of transferred business to qualifying vessels. Competition exists in the fishery and, to a certain degree, not all vessels enjoy full operation, i.e., not all fishable days are booked, and not all trips carry full passenger loads. Thus, the proposed action will eliminate the opportunity of increased business that would likely arise for the 2,136 qualifiers under the status quo as a result of lost platform opportunities from non-qualifiers. Also, under the status quo, the potential exists for improved fishing success by anglers as a result of decreased pressure by those anglers who cancel their trips, resulting in improved quality and value of fishing trips. The proposed action, by accommodating historic participation in

the fishery, would eliminate these potential gains. However, any gains under the status quo would be temporary and the extent of their magnitude cannot be determined. Further, no information exists to suggest that the qualifying vessels under the status quo have the capacity to absorb the potential magnitude of platform opportunities at risk (30 percent). Thus, despite some business transference, the status quo is likely to result in a substantial loss of revenues, income, and fishing opportunities, and cause a significant amount of social disruption in the fishery and associated communities.

Since the geographic distribution of the vessels that would qualify under the provisions of the proposed action is unknown, it is not possible to determine the resultant impacts by geographic location or fishing community. It should be emphasized, however, that the status quo will eliminate the continued participation of approximately 30 percent of current legitimate for-hire fishing operations. Despite the inability to identify geographically localize these losses would occur (or, their avoidance as a result of the proposed action), the magnitude of the overall loss would be significant to the fishery as a whole as well as to the individual families and participants that are involved. Approximately 50 percent of total household income is generated by the charter business for vessels operating in Alabama-Texas, while the appropriate figure is 77 percent for businesses operating in Florida. For the partyboat/headboat fleet, the values are 78 percent and 93 percent, for Alabama-Texas and Florida, respectively. Loss of this income could not be borne without substantial disruption of the businesses and families they support.

### 1.5 Public and Private Costs of Regulations

The preparation, implementation, enforcement, and monitoring of this or any federal action involves the expenditure of public and private resources which can be expressed as costs associated with the regulations. Costs associated with this amendment include:

Council costs of document preparation, meetings, public hearings, and information dissemination .....	None
NMFS administrative costs of document preparation, meetings and review .....	\$20,000
Law enforcement costs .....	None
Public burden associated with permits and reporting requirements .....	\$6,000
NMFS costs associated with permits and reporting requirements .....	\$6,000
TOTAL .....	\$32,000

It should be emphasized that the costs reported above apply solely to the corrected amendment and do not contain the cost estimates of the original action. Since the current action is being developed by NMFS, no additional costs accrue to the Council. The costs associated with the permit and reporting requirements (public and NMFS) were estimated at 30 percent of the estimates contained

in the original action (\$20,000 for each category) since the original estimates were based on a qualifying pool that included those erroneously excluded. These costs pertain mainly to the initial implementation of this Amendment. There are additional public burden costs or NMFS costs associated with permitting and reporting requirements. The total initial reporting burden for permits is estimated at 420 hours, of which 126 hours would be borne by the new qualifiers under the proposed action, and for surveying 10 percent of vessel captains, 150 hours annually, of which 45 hours would be borne by the new qualifiers. Each permit transfer is estimated to require 20 minutes and each survey of a vessel captain, 3 minutes. The proposed measures would entail additional enforcement costs, but under a fixed level of enforcement budget and personnel, a redirection of resources would have to be undertaken in order to conduct monitoring and enforcement activities necessitated by the actions in this amendment. While the government cost associated with permits is reduced by the same amount paid by the public, NMFS would still have to expend the money as permit fees go to the general treasury.

## **1.6 Summary of Economic Impacts**

The proposed moratorium has the potential to stabilize the for-hire fishery while the need for some form of controlled access is evaluated for the fishery. The proposed action will establish an effective 3-year moratorium, which may be as much as 1 year longer than the effective period of the status quo. Neither the 3-year moratorium or the status quo duration are expected to adversely affect the average charter vessel or headboat operator. The eligibility criteria specified in the proposed action will support the avoidance in potential loss of \$59.8-\$74.8 million in for-hire vessel receipts and \$75 million in angler expenditures, although these figures would likely be reduced by some unknown amount due to transfer of business to qualifying vessels.

With regards to the other components of the moratorium plan, as established by the original rule and not modified by the corrected action, the assessment provided in the original rule applies and is summarized as follows:

1. Imposing restrictions on the transfer of for-hire vessel permits during the moratorium would restrict the development of markets for licenses, thus potentially limiting the ability of more efficient operators to enter the fishery or improve their fishing operations. The alternatives on the transfer of permits based on vessel length or passenger capacity may control the expansion of effort in the fishery during the moratorium, but may also affect the development of a more economically efficient for-hire business operation. The passenger-based restrictions appear to offer a better chance of limiting effort expansion than vessel length-based alternatives.

2. If the non-issuance of permits not renewed increases the profitability of the for-hire industry, then retiring permits during the moratorium would be the more economically preferred alternative.

3. The establishment of an Appeals Board has practically no bearing on economic efficiency to the extent that the number of successful appeals is substantially smaller than the number of permits issued at the start of the moratorium. With the liberal cut-off date of March 29, 2001, for

initial eligibility, successful appeals are expected to be few.

4. Logbook reporting provides a broader informational base than MRFSS-based data collection. The former, however, imposes more burden on fishermen, although the same burden has already been borne by headboats which are now currently subject to logbook reporting.

5. Making the submission of fishery information, either by logbooks or participation in the MRFSS, an important precondition for permit renewal would greatly aid in collecting needed information from for-hire vessel operators. The MRFSS-based approach poses equity problems related to the fact that this system exposes only a portion of the for-hire vessel operators to the risk of having their permits not renewed.

### **1.7 Determination of Significant Regulatory Action**

Pursuant to E.O. 12866, a regulation is considered a "significant regulatory action" if it: (1) has an annual effect on the economy of \$100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) creates a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The measures in the corrected amendment will allow the continuation of historic participation in the fishery and allow a greater number of vessels to operate in the for-hire fishery in the Gulf of Mexico over the number of vessels allowed under status quo. This action will allow the avoidance of a significant reduction in historical and Council-intended participation and, as such, allow the avoidance of potential losses of \$59.8-\$74.8 million in for-hire vessel receipts and \$75 million in angler expenditures. While some of the reduction that would occur under the status quo may increase the profitability of the remaining business operations, the two effects would not be expected to be offsetting.

Measures in this amendment do not interfere or create inconsistency with any action of another agency, including state fishing agencies. The proposed amendment is made applicable only to fishing operations of for-hire vessels in Federal waters, although the various states would be requested to make their rules applicable to fishing in state waters consistent with the provisions in this amendment. Also, measures in this amendment do not affect any entitlements, grants, user fees, or loan programs. The concept of a moratorium on permits as a management tool has been used in the Gulf and South Atlantic in previous actions of the Gulf and South Atlantic Councils, and thus is deemed not to raise novel legal and policy issues. Some amount of controversy may be expected of this amendment, particularly as it relates to the initial eligibility requirement for permits under the moratorium. The particular choice of March 29, 2001, which is relatively liberal compared to the original control date of November 18, 1998, as the cut-off date for initial eligibility does significantly reduce such controversy. In addition, appeals may be submitted to the RA in the event

certain persons are initially denied permits.

Since the proposed action will not have an adverse impact on the economy, the conclusion is rendered that this regulation, if enacted, would not constitute a "significant regulatory action."

## **2.0 Initial Regulatory Flexibility Act Analysis**

Introduction: The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA does not contain any decision criteria; instead, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the FMP or amendment (including framework management measures and other regulatory actions) and to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct a regulatory flexibility analysis for each proposed rule. The regulatory flexibility analysis is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. This analysis is conducted to primarily determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." In addition to analyses conducted for the RIR, the regulatory flexibility analysis provides: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the final rule; (3) a description and, where feasible, an estimate of the number of small entities to which the final rule will apply; (4) a description of the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; and, (5) an identification, to the extent practical, of all relevant Federal rules which may duplicate, overlap, or conflict with the final rule.

Description of the reasons why action by the agency is being considered: Over the past two decades, the charter vessel/headboat sector (hereafter referred to as the for-hire sector) has increased in terms of vessel numbers, vessel trips, and percent of the recreational catch taken relative to other recreational angler sectors, particularly for four species of significant importance and concern, red snapper, king mackerel, gag and red grouper. High harvest rates by the for-hire sector also exist for greater amberjack and vermilion snapper. Red snapper and red grouper are classified as being overfished and subject to overfishing, king mackerel and greater amberjack are classified as overfished, gag is classified as subject to overfishing and approaching an overfished state, and vermilion snapper is classified as subject to overfishing. Red snapper and king mackerel have been subjected to restrictive recreational allocations which have been frequently exceeded by recreational landings. In 1996, Congress made the red snapper recreational allocation a quota and provided that

fishing be closed when the quota is projected to be reached. The recreational red snapper fishery experienced increasingly longer closures from the 1997 to the 1999 seasons until an alternative fixed season was developed for the 2000 and subsequent seasons. The progressively longer closures adversely impacted that portion of the for-hire sector dependent on the red snapper fishery.

Under a rule promulgated on June 28, 2002 (67 FR, 43558), all for-hire operators in the Gulf of Mexico exclusive economic zone are required to have a valid limited access "moratorium permit," as opposed to the prior open access for-hire permit, beginning December 26, 2002. Subsequent to publication of the rule, it was determined that the amendment did not correctly reflect the actions approved by the Council, resulting in the unintentional exclusion of 935 historical participants in the fishery. To correct this error, NOAA Fisheries promulgated an ER that extended several dates associated with the moratorium to allow those participants erroneously excluded from qualifying for a moratorium permit to continue participation in the fishery while a corrected amendment is prepared.

This action is, therefore, being considered to stabilize the for-hire fleet by limiting permits while the Council considers whether to implement a more comprehensive limited access system, and to correct the errors in the original final moratorium rule.

Statement of the objectives of, and legal basis for, the proposed rule: The objective of the Council is to cap the number of vessels at historical participation levels while it assesses the actions necessary to restore these stocks, evaluates the effects of the moratorium, and determines the need for further action. The Magnuson-Stevens Act, as amended, provides the legal basis for the rule.

Description and estimate of the number of small entities to which the proposed rule will apply: It cannot be determined how many small entities would be affected by the proposed rule. Two categories of impacted entities are presumed, those that qualify for the for-hire permit and those that do not. An estimated 3,071 permitted for-hire vessels would qualify for the moratorium permit, of which 1,917 would qualify for both reef fish (RF) and coastal migratory pelagic (CMP) endorsements, 974 would qualify for only the CMP endorsement, and 180 would qualify for only the RF endorsement. In addition to these vessels, an indeterminate number of entities would qualify for the initial issuance of the for-hire moratorium permit under the historical captain or vessel-under-construction criteria. In total, the two groups would constitute the universe of qualified small entities. A precise estimate of this universe cannot be provided as, although it can be presumed that all active permits will be maintained to allow either sale of the permit or continued use, it cannot be determined how many entities will qualify under the historical captain or vessel-under-construction criteria. Of the 3,071 vessels qualifying vessels, 2,136 vessels qualify under the status quo moratorium program, of which 1,373 vessels qualify for both endorsements, 99 vessels qualify for only the RF endorsement, and 664 vessels qualify for only the CMP for-hire endorsement. The proposed action would, therefore, allow the qualification of an additional 935 vessels, of which 544 vessels would qualify for both endorsements, 81 vessels would qualify for the RF endorsement, and 310 vessels would qualify for the CMP endorsement.

As of March 7, 2002, an additional 595 reef fish or coastal migratory pelagic charter permits had

been issued for the for-hire fishery since the March 2001 control date. As of January 14, 2003, the number of new permits had increased to 882. It cannot be determined how many additional open access permits will be issued between this date and implementation of the final corrected rule. Further, it cannot be determined how many vessels would normally seek to enter the fishery during the moratorium period, were it not in place. It cannot be determined what portion of the new permits represent new entry as opposed to being permits issued to persons that would have qualified under the moratorium provisions. Further, since the total includes coastal migratory pelagic permits which is a generic permit that applies to operation in both the Gulf of Mexico and South Atlantic, an unknown quantity of these permits may be attributed to vessels that operate exclusively in the South Atlantic and would not be impacted by the proposed corrected rule. The magnitude of this potential effect cannot be determined since neither home address or home port are necessarily a precise indicator of exclusive area of operation. It is logical to presume that some portion of the current and future increase is and will be comprised of historical captains or persons that had vessels under construction and would, therefore, meet the qualification criteria. The exact number of participants that this applies to, however, cannot be determined. Thus, while it is illogical to conclude that the entirety of the 882 or future new permits would comprise the universe of entities that would be excluded from the fishery as a result of the proposed rule, specific estimates cannot be provided. Further, the current action only affects those participants that received their permits after December 26, 2002 (the date of full implementation of the original moratorium program), since those participants that received permits issued prior to this date are excluded from qualification for the moratorium permit through the provisions of the original rule. While it is not known how many of these 882 permits were issued after December 26, 2002, it is not believed to be a significant portion considering the March 2002 total (595, or 67 percent), the short duration and seasonal timing of the period in question (less than 3 weeks and over the Christmas/New Year holidays), and the certainty on subsequent non-qualification.

Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records: The initial qualification requirements will mandate the provision of information necessary to establish qualification for the initial for-hire permit, such as information on income, record of past participation in the fishery, and proof of the time a vessel was under construction. The requirement that permitted vessels participate in the standard data collection programs implemented in the region as a condition for permit renewal will require that information be maintained on standard vessel operation information, such as trips, passenger loads, catch success, etc. All information elements required for these actions are standard elements essential to the successful operation of the business and should already be collected and maintained as standard operating practice by the business. These requirements do not require professional skills, and, therefore, may be deemed not to be onerous on the affected participants.

Identification of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule: No duplicative Federal rules have been identified, since the moratorium will be the first to affect the for-hire fishery in the Gulf and South Atlantic. Since the moratorium applies only to the Gulf, the proposed rule would implement a system that differs from that existent in other

areas, particularly the South Atlantic. This difference would be especially pronounced in Florida where the moratorium applies only on the west coast and not on the east coast of the state. To the extent that the South Atlantic Fishery Management Council is in the process of adopting a similar moratorium in its area of jurisdiction, particularly with respect to the coastal migratory pelagic for-hire fishery, the potential conflict in rules affecting the for-hire fishery in the Gulf of Mexico versus the South Atlantic area of jurisdiction would be minimized. Further, because a control date for entry into the for-hire fishery has been set by the Secretary of Commerce for highly migratory species, the moratorium would complement such action, at least in the Gulf of Mexico where highly migratory species are prosecuted by for-hire vessels. It should be noted that the corrected amendment contains all actions previously contained in the original final rule that do not need corrective modification. This does not imply that these actions need to be re-approved and constitute duplication.

Description of Significant Alternatives: The alternatives previously analyzed for the original moratorium are included in the IRFA which is part of the preceding document. These alternatives include entirely separate qualification criteria and were fully analyzed for the previous regulatory action. No new information has been obtained that would alter the analysis relating to these alternatives and that analysis is incorporated herein by reference.

Substantial Number of Small Entities Criterion: There are two general classes of small entities that would be directly affected by the proposed rule, namely, charter boats and headboats. The Small Business Administration (SBA) defines a small business in the charter vessel activity as a firm with receipts up to \$6.0 million per year. Sutton et al. (1999) estimated that the average annual receipts of charter vessels amount to about \$82,000 in Alabama, \$64,000 in Louisiana, \$52,000 in Mississippi, and \$72,000 in Texas. The estimated average annual receipts for party boats in Alabama through Texas are approximately \$141,000. This number is likely severely understated, since nearly 70 percent of the sample respondents indicated gross revenues in the questionnaire's top category of \$150,000 or more annually. Holland et al. (1999) reported that in Florida the average annual receipts of charter vessels total \$56,000 (\$68,000 using an alternative method based on base passenger price, average passenger load and total trips) and those of headboats, \$140,000 (\$324,000 using the alternative method). They also reported that the average annual receipts for charter vessels in Georgia, South Carolina, and North Carolina total \$57,000, \$26,000, and \$60,000, respectively. The average annual receipts for headboats in these areas amounted to \$123,000. Although several vessels reported annual receipts well in excess of the average, none reported receipts close to the \$6.0 million threshold. Hence, it is clear that all entities can be considered small business entities. Since all entities operating in the fishery as well as the 935 new qualifiers will be affected by the proposed rule, the criterion of a substantial number of the small business entities comprising the sector being affected by the proposed rule will be met.

Significant Economic Impact Criterion: The outcome of "significant economic impact" can be ascertained by examining two issues: disproportionality and profitability.

Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All the for-hire vessel operations potentially affected by the proposed rule are considered small entities so that the issue of disproportionality does not arise in the present case.

Profitability: Do the regulations significantly reduce profit for a substantial number of small entities?

Due to the problems associated with the existing revenue estimates discussed above, reliable estimates of vessel profits for the for-hire sector do not exist. Sutton et al. (1999) reported a negative net revenue (gross revenues minus total reported expenses) of \$12,099 for an average charter boat in the Alabama-Texas area. Operating profits, however, were positive and averaged \$14,650 annually. For headboats, the estimated net revenue and operating profits were negative. Holland et al. (1999) provided no estimates for net revenue or profit for the for-hire vessels in Florida due to the estimation problems.

Two categories of operations will be affected by the proposed rule, qualifying vessels and non-qualifying vessels. Effects on qualifying vessels may accrue through the permit fee, the reporting requirement, and the limitation on passenger capacity expansion. While permit fees are \$50 for the first permit and \$20 each for any additional permit, all vessels are currently required to possess a permit. Thus, permit costs should not be substantially affected, nor should they significantly affect profits. The reporting requirement impacts time expenses rather than actual monetary outlays and, therefore, do not directly affect profitability. However, the time expenses are estimated at \$13 for charter boat participants (5.5 interviews x 7 minutes per interview x \$20 per hour) and \$700 for headboat participants (140 logbooks per headboat x 15 minutes per logbook x \$20 per hour). The effects on profits of the limitation on passenger capacity expansion cannot be estimated because neither the cost of purchasing an existing permit, the expected rate of expansion (what portion of vessels might be expected to expand their passenger capacity), or the expected average capacity expansion can be forecast. Thus, it is not possible to estimate the number of qualifying small business entities that would be affected by the proposed rule or the extent that their profits might be impacted.

Additionally, the 935 vessels that were previously erroneously excluded from qualification for the moratorium permit that will be qualified under the proposed action will, while allowing continuation of their historic participation and accompanying profit performance, will experience a substantial increase in profitability over what would occur under the status quo since they would be precluded from continued participation under the current rule.

Effects on non-qualifying vessels would consist of the effects on business profits of not being allowed to continue participation in the fishery or enter the fishery without purchasing a existing permit. The effects on profits of these vessels is unknown since neither the price of the necessary permit nor the alternative business options (what they might do and what the profitability profile of this option is in lieu of participating in the for-hire fishery) for these vessels are known. It is also not possible to estimate the number of small entities this would affect.

Conclusion: The requirements of the proposed rule do not require professional skills and are not onerous on the affected participants. No duplicative Federal rules have been identified. It cannot

be determined how many small entities would be affected by the proposed rule. A precise estimate of these entities cannot be provided since it cannot be determined how many entities would seek to enter the fishery during the moratorium. The proposed action, however, will allow 935 vessels that were erroneously excluded by the original final moratorium rule to qualify for a moratorium permit and continue participation in the for-hire fishery. This constitutes approximately 30 percent of the historic fleet. In addition to the universe of qualifying and non-qualifying small entities, an unknown number of guide vessels that operate solely in state waters may be affected by the moratorium through its impacts on stock conditions and angler demand.

All entities operating in the fishery can be considered small business entities. Since all entities operating in the fishery will be affected by the proposed rule, the criterion of a substantial number of the small business entities comprising the sector being affected by the rule will be met. Since all entities affected by the proposed rule are considered small entities, the issue of disproportionality does not arise. The effects of the proposed rule on profits cannot be estimated because neither the cost of purchasing an existing permit, the alternative operation options (what vessels might do and what the profitability profile of this option is in lieu of participating in the for-hire fishery), the expected rate of capacity expansion (what portion of vessels might be expected to expand), or the expected average capacity expansion are known. The 935 additional vessels that will be qualified under the proposed action, while allowed continuation of their historic participation and accompanying profit performance, will experience a substantial increase in profitability over what would occur under the status quo since they would be precluded from continued participation under the current moratorium rule. It is therefore concluded that the proposed rule would result in a significant economic impact on a substantial number of small entities.

## References

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