

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 060216043-6043-01; I.D. 021306C]

RIN 0648-AS70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Limited Access Program for Gulf Charter Vessels and Headboats

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 17 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 17) and Amendment 25 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 25) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a limited access system for charter vessel/headboat (for-hire) permits for the reef fish and coastal migratory pelagic fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico and would continue to cap participation at current levels. In addition, NMFS proposes a number of minor revisions to remove outdated regulatory text and to clarify regulatory text. The intended effect of this proposed rule is to provide for biological, social, and economic stability in these for-hire fisheries.

DATES: Comments must be received no later than 5 p.m., eastern time, on April 27, 2006.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-AS70.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AS70.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Jason Rueter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Jason Rueter.

Copies of Amendments 17 and 25, which include a Regulatory Impact Review (RIR), an Initial Regulatory Flexibility Analysis (IRFA), and a Supplemental Environmental Impact Statement (SEIS), may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813-348-1630; fax: 813-348-1711; e-mail: gulfcouncil@gulfcouncil.org. Copies of the amendments may also be downloaded from the Council's website at www.gulfcouncil.org.

FOR FURTHER INFORMATION CONTACT:

Jason Rueter, telephone: 727-570-5305; fax: 727-570-5583; e-mail: Jason.Rueter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) prepared by the Council. The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Council, in cooperation with the Gulf charter vessel/headboat industry, developed Amendment 14 to the Coastal Migratory Pelagics FMP and Amendment 20 to the Reef Fish FMP to address issues of increased fishing mortality and fishing effort in the for-hire sector of the recreational fishery in the Gulf of Mexico. These amendments required charter vessels and headboats operating in the fisheries for Gulf reef fish or Gulf coastal migratory pelagic fish to obtain a moratorium permit and also established a 3-year moratorium on issuance of additional permits for these for-hire fisheries. NMFS approved Amendments 14 and 20 and promulgated the charter vessel/headboat moratorium regulations (67 FR 43558, June 28, 2002) to implement the amendments. The moratorium, scheduled to expire on June 16, 2006, was intended to temporarily stabilize fishing effort in the for-hire sector of these fisheries while the Council evaluated a more comprehensive, long-term approach.

Limited Access System

This proposed rule would establish a limited access system in the for-hire reef fish and coastal migratory pelagic fisheries in the EEZ of the Gulf of Mexico that would continue to cap participation at the current level. This action is necessary to ensure the for-hire fishery does not revert to open access with resulting inappropriate increases in fishing mortality upon expiration of the moratorium. As was the case under the moratorium, no additional permits would be issued for these fisheries under the limited access system. Under the proposed limited access system, an owner of a vessel with a valid or renewable charter vessel/headboat permit for Gulf reef fish or Gulf coastal migratory pelagic fish on the date Amendments 17 and 25 are approved (assuming approval) would be issued the applicable permits under the limited access system. There would be no changes to the current procedures for application, qualification, issuance, renewal, or transferability of these permits. This limited access system would be of indefinite duration and would remain in place unless the Council subsequently amends the Coastal Migratory Pelagics and Reef Fish FMPs to revise, replace, or eliminate it. The Council would review the effectiveness of this limited access system every 10 years.

Changes Proposed by NMFS

In § 622.3, NMFS proposes to revise outdated regulatory citations regarding national marine sanctuaries.

In § 622.4(r), NMFS is proposing to remove outdated text related to the original permit moratorium that is no longer relevant. In § 622.4(r)(1), NMFS proposes a revision to clarify that the basis for determining authorized passenger capacity in relation to permit transfers is the authorized passenger capacity specified on the face of the permit being transferred, which is the authorized passenger capacity of the vessel for which the original permit was issued under the moratorium. In § 622.4(r)(2), NMFS is proposing to revise the language regarding permit renewal requirements to be more consistent with the Council's original intent as expressed in Reef Fish Amendment 20 and Coastal Migratory Pelagics Amendment 14. The revised language clarifies that a selected participant must provide information as requested in approved data surveys including, but not limited to, those listed in § 622.4(r)(2). The phrase "but not limited to" was inadvertently

omitted from the rule implementing the Corrected Amendment.

In § 622.42, NMFS proposes to remove paragraph (a)(3), which was inadvertently and inappropriately retained in a prior revision of § 622.42. Paragraph (a)(3) contains outdated text.

Classification

At this time, NMFS has not determined whether Amendments 17 and 25, which this rule would implement, are consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment periods on these amendments and on this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from the Council office (see ADDRESSES). A summary of the analysis follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would establish a limited access system for Gulf for-hire reef fish and coastal migratory pelagic fish permits. In effect, this rule will extend indefinitely the current moratorium on these permits that is set to expire on June 16, 2006.

The main objective of the proposed rule is to control increases in for-hire fishing vessels or passenger capacity while the Council determines the appropriate long-term management strategy for the for-hire fishery. Such strategy would be related to stabilizing or reducing for-hire fishing mortality for reef fish and coastal migratory pelagic fish stocks that have rebuilding plans or are overfished or undergoing overfishing.

Permitting of for-hire vessels has been required since 1987 for coastal migratory pelagic fish and 1996 for reef fish. When the current moratorium was established in 2003, NMFS issued for-hire moratorium permits to 1,857 vessels, but it is estimated that at the same time 510 to 899 vessels were excluded. Some of the excluded vessels left the fishery before the moratorium took effect. Some of the vessels that were still in operation but inadvertently

excluded from the moratorium were allowed to re-enter the fishery through an emergency reopening of the application period. Both included and excluded vessels may be considered to comprise the universe of vessels affected by the proposed rule.

For-hire vessels with initial moratorium permits operate as charter vessels only, headboats only, or charter vessel/headboat combination. Some for-hire vessels also operate as commercial fishing vessels at certain times of the year. However, most (66.7 percent) operate as charter vessels only, and a great majority of these vessels (87.7 percent) operate in both the coastal migratory pelagic and reef fish fisheries. About 69 percent of these vessels are individually owned and operated, 27 percent have corporate ownership, and the rest are in some other form of ownership. Florida is the homeport state of most vessels, followed in order by Texas, Alabama, Louisiana, Mississippi, and other states. In the absence of relevant information, vessels excluded from the moratorium are deemed to have the same characteristics as those that obtained moratorium permits.

For-hire vessel costs and revenues are not routinely collected. For the purpose of these amendments, data from two previous 1999 studies were pooled to characterize the financial performance of for-hire vessels. Charter vessels charge their fees on a group basis while headboats do it on a per-person (head) basis. On average, a charter vessel generates \$76,960 in annual revenues and \$36,758 in annual operating profits. An average headboat, on the other hand, generates \$404,172 in annual revenues and \$338,209 in annual operating profits. Excluding fixed and other non-operating expenses, both types of for-hire operations generate positive profits. On average, both charter vessels and headboats operate at about 50 percent of their passenger capacity per trip.

The financial performance of charter vessels and headboats varies according to the size of operation (passenger capacity) and geographic areas. For headboats, revenues range from \$298,812 (\$263,062 profits) for 13 to 30 maximum passenger capacity to \$570,376 (\$460,760 profits) for 61 or greater maximum passenger capacity. For charterboats, revenues range from \$70,491 (\$34,949 profits) for the 6 and under maximum passenger capacity to \$129,813 (\$86,502 profits) for the 7–12 maximum passenger capacity vessels. Florida charter vessels generate annual revenues of \$68,233 (\$30,249 profits), while their counterparts in other areas earn \$106,118 in annual revenues (\$43,494 profits). Florida headboats

generate annual revenues of \$318,512 (\$249,103 profits), while their counterparts in the other areas earn revenues of \$630,046 (\$542,425 profits). In general, larger for-hire vessels generate larger profits, and for-hire vessels in Florida earn lower profits than those in other areas.

A fishing business is considered a small entity if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of \$6 million in the case of for-hire entities. Given the data on revenues and profits, the for-hire vessels affected by the proposed rule are determined to be small business entities.

All the for-hire vessel operations affected by measures in these amendments are considered small entities, so the issue of disproportionality does not arise in the present case. In general, headboat operations are larger than charter vessel operations in terms of revenues and costs as well as vessel and crew sizes and passenger capacity. There are also variations in the size of operations within the charter vessel and headboat classes.

There are two types of effects on profitability depending on whether a vessel is included or excluded from operating in the EEZ for-hire fisheries. Those included are expected to either maintain or increase their returns from for-hire operations should angler demand increase and the number of permits remain capped. Those excluded would continue to forgo any potential profits from for-hire operations related to reef fish or coastal migratory pelagic fish in the EEZ, although they may still earn profits from their state water for-hire operations or commercial fishing operations. For those that previously depended mainly on fishing trips in the EEZ, their profits would continue to be substantially reduced absent purchase of a limited access permit. These entities, as well as new entrants into the fishery, would have to expend an additional fixed cost in the form of purchase cost of the charter permit. This cost would have to be explicitly considered by new entrants as an integral part of their decision to invest in the for-hire fishery.

Because the proposed rule would essentially extend the current moratorium on the issuance of new for-hire permits, it would not impose any additional record keeping or reporting requirements. Also, all the compliance requirements currently in place would remain the same. In the same vein, the proposed rule would not affect current permitting, certifications, and other

requirements by other Federal agencies, and thus it would not in any way conflict with or be duplicative of any relevant Federal rules.

The other alternatives considered in these amendments are the no action alternative, which would allow the moratorium to expire in 2006; extension of the moratorium by 5 years; and extension of the moratorium by 10 years. The alternatives that would extend the moratorium by 5 years or 10 years have similar effects as the proposed rule, although the magnitudes involved are lower because the moratorium would still be time limited. However, those alternatives would require additional administrative action and costs to subsequently extend the moratorium to meet the Council's objective of capping effort, and those alternatives would not provide the regulatory stability needed by the for-hire industry to make longer-term business decisions. For these reasons, those alternatives were not adopted. The no action alternative would benefit vessel operations re-entering the for-hire fishery as well as new entrants because they would not have the additional cost of purchasing permits. But their entrance into the for-hire fishery would impinge on the profitability of existing vessel operations as well as potentially increase the harvest and discards of certain species that are overfished or undergoing overfishing. A reversion to open access in the for-hire fishery would also complicate the management measures the Council might adopt for the fishery to address overfishing issues. Moreover, the no action alternative can only exacerbate the excess capacity problem in the for-hire fishery, especially given that for-hire vessels are currently operating at about half their capacity.

Certain measures have already been adopted to mitigate the adverse economic impacts of the moratorium. These include: (1) relatively liberal qualifying eligibility criteria for the moratorium permits, such as the inclusion of most historical participants, historical captains, and those who already committed money for the construction of vessels; (2) liberal provision for renewing for-hire permits; (3) transferability of for-hire permits, except historical captain permits; and, (4) an emergency action re-opening the moratorium permit application process to participants inadvertently excluded from the moratorium, which resulted in issuance of an additional 62 moratorium permits but did not alter the conclusions of this analysis. Additionally, re-entrants and new entrants can participate in the for-hire

fishery by purchasing permits from current permit holders. These features are preserved under the proposed rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 7, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.3, paragraph (b) is revised to read as follows:

§ 622.3 Relation to other laws and regulations.

* * * * *

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such Sanctuaries or Parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following Marine Sanctuaries and National Parks:

(1) Florida Keys National Marine Sanctuary (15 CFR part 922 subpart P).

(2) Gray's Reef National Marine Sanctuary (15 CFR part 922 subpart I).

(3) Monitor National Marine Sanctuary (15 CFR part 922 subpart F).

(4) Everglades National Park (36 CFR 7.45).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Fort Jefferson National Monument (36 CFR 7.27).

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3. In § 622.4, paragraphs (a)(1)(ii) and (r) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(1) * * *

(ii) See paragraph (r) of this section regarding a limited access system for charter vessel/headboat permits for Gulf reef fish and Gulf coastal migratory pelagic fish.

* * * * *

(r) *Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish and Gulf reef fish.* No applications for additional charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (r)(1) of this section, and are subject to the renewal requirements in paragraph (r)(2) of this section.

(1) *Transfer of permits—(i) Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred. An application to transfer a permit to an inspected vessel must include a copy of that vessel's current USCG Certificate of Inspection (COI). A vessel without a valid COI will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(ii) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred, and is not otherwise transferable.

(iii) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the owner of the vessel who is transferring the permit and the owner of the vessel that is to receive the transferred permit must complete the transfer information on the reverse side of the permit and return the permit and a completed application for transfer to the RA. See paragraph (g)(1) of this section for additional transfer-related requirements applicable to all permits issued under this section.

(2) *Renewal.* (i) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in one of the

approved fishing data surveys. Surveys include, but are not limited to—

(A) NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(B) NMFS' Southeast Headboat Survey (as required by § 622.5(b)(1);

(C) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(D) A data collection system that replaces one or more of the surveys in paragraph (r)(2)(i)(A),(B), or (C) of this section.

(ii) A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(3) *Requirement to display a vessel decal.* Upon renewal or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for the applicable permitted fishery or fisheries. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

§ 622.42 [Amended]

4. In § 622.42, paragraph (a)(3) is removed.

[FR Doc. 06–2389 Filed 3–10–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060301058–6058–01; I.D. 022306A]

RIN 0648–AU13

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for the Northeast Multispecies Fishery for Fishing Year 2006

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes three types of 2006 fishing year (FY) Total Allowable Catches (TACs) for the Northeast (NE) Multispecies Fishery Management Plan

(FMP). Hard TACs for Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area; target TACs for all NE regulated multispecies; and hard Incidental Catch TACs for groundfish stocks of concern. This action also provides notice that the hard TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder may be adjusted during FY 2006, if NMFS determines that the harvest of these stocks in FY 2005 exceeded the TACs specified for FY 2005. The intent of this action is to provide for the conservation and management of groundfish management under the FMP.

DATES: Comments must be received by April 12, 2006.

ADDRESSES: You may submit written comments by any of the following methods:

- E-mail: USCATAAC@NOAA.gov. Include in the subject line the following: Comments on the proposed TACs for the U.S./Canada Management Area.

- Federal e-rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the proposed TACs for the U.S./Canada Management Area.”

- Fax: (978) 281–9135.

Copies of the Transboundary Management Guidance Committee's 2005 Guidance Document and copies of the Environmental Assessment of the 2006 TACs (including the Regulatory Impact Review and Initial Regulatory Flexibility Analysis (IRFA)) may be obtained from NMFS at the mailing address specified above; telephone (978) 281–9315. NMFS prepared a summary of the IRFA, which is contained in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT:

Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail Thomas.Warren@NOAA.gov.

SUPPLEMENTARY INFORMATION: The NE Multispecies FMP specifies a procedure for setting three types of TACs: (1) Annual hard (i.e., the fishery or area closes when a TAC is reached) TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder; (2) target TACs for all regulated groundfish stocks; and (3) hard Incidental Catch TACs for groundfish stocks of concern.

Hard TACs

The regulations governing the annual development of hard TACs for the U.S./

Canada Management Area species (§ 648.85(a)(2)) were implemented by Amendment 13 to the FMP (69 FR 22906; April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the U.S. and Canada that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs are determined through a process involving the New England Fishery Management Council (Council), the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee (§ 648.85(a)(2)(i)). On September 7 and 8, 2005, the TMGC developed the guidance document for 2006 (Guidance Document 2005/01), and on September 9, 2005, the Steering Committee concurred with the TMGC recommendations. On September 15, 2005, the Council accepted the recommendations of the TMGC for the 2006 TACs for GB cod, GB haddock, and GB yellowtail flounder. The recommended 2006 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2005), and the fishing mortality strategy shared by both the U.S. and Canada. The strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference ($F_{ref} = 0.18, 0.26, \text{ and } 0.25$ for cod, haddock, and yellowtail flounder, respectively). That is, when stock conditions are poor, fishing mortality rates (F) should be further reduced to promote rebuilding.

For GB cod, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2006 is 1,700 mt. This corresponds to an F less than the F_{ref} of 0.18 in 2006 and represents a very low risk, less than 25-percent probability, of exceeding the F_{ref} . At this level of harvest there is also a greater than 75-percent probability that stock biomass will increase by at least 10 percent from 2006 to 2007. The annual allocation shares for FY 2006 between the U.S. and Canada are based on a combination of historical catches (30 percent weighting) and resource distribution based on trawl surveys (70 percent weighting). Combining these factors entitles the U.S. to 22 percent and Canada to 78 percent, resulting in a national quota of 374 mt for the U.S. and 1,326 mt for Canada.