

White Paper on Commercial HMS General Category Permitted Vessels that are Certified as Compliant by the U.S. Coast Guard for the Safety Requirements of a Commercial Fishing Vessel

South Atlantic Fishery Management Council

Highly Migratory Species Committee

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Ponte Vedra Beach, FL

Introduction

At the December 2016 South Atlantic Council meeting, the Highly Migratory Species (HMS) Committee discussed a letter received from the Southeastern Fisheries Association (SFA) stating several concerns over perceived undocumented sales of HMS species landed by vessels with a HMS general category permit and lack of compliance regarding a rule specifying that a commercial fishing vessel must receive a Commercial Fishing Vessel Dockside Safety Examination from the U.S. Coast Guard (USCG) at least once every five years. One request from the SFA was for the HMS Committee to obtain information on the number of vessels possessing a commercial HMS general category permit but not certified as compliant by the USCG for the safety requirements of a commercial fishing vessel. The SFA expressed concern that HMS species are being caught and sold on vessels that are not adhering to the safety exam requirements, thereby creating an inequitable situation for other HMS commercial vessel owners that are adhering to the USCG requirements. After input from Council members and USCG representatives, the Committee directed staff to provide further information on the potential issue.

Background

HMS commercial general category permits include the Atlantic Tunas Permit (General, Harpoon, and Purse Seine), Swordfish General Commercial Permit, Combination Swordfish/Tunas Permit, and Atlantic HMS Charter/Headboat Permit. With the exception of the Purse Seine Atlantic Tunas Permit, these permits are open access and allow the commercial sale of HMS under specified limits for the permit. The Atlantic Tunas Permit authorizes a vessel to commercially fish for regulated Atlantic tunas (bluefin, yellowfin, skipjack, albacore, and bigeye) with rod & reel, bandit gear, green-stick, handline, or harpoon. The Swordfish General Commercial Permit authorizes vessels to commercially fish for North Atlantic swordfish using rod & reel, handline, harpoon, bandit gear, or green-stick. Both of these permits also authorize recreational fishing in registered Atlantic HMS tournaments for any Atlantic HMS. The Combination Swordfish/Tunas Permit authorizes vessels to commercially fish for North Atlantic swordfish and regulated Atlantic tunas¹.

The Atlantic HMS Charter/Headboat Permit is a dual-purpose permit, authorizing both recreational for-hire and commercial fishing for HMS species. This permit authorizes charter and headboat vessels to take for-hire passengers to recreationally fish for and retain any Atlantic HMS with rod & reel; tunas, sharks, and swordfish with handline; tunas with green-stick or

¹Atlantic HMS Permit Descriptions, <https://hmspermits.noaa.gov/permitDetails?ID=999992017>

bandit gear; and free-swimming tunas (excluding bluefin) with a speargun. The permit also authorizes some commercial sale of tunas, swordfish, and sharks, with restrictions depending on the for-hire status of the vessel, the species kept, and the additional possession of other limited access permits if applicable. A captain licensed by the USCG must be onboard the Atlantic HMS Charter/Headboat permitted vessel during all HMS fishing activities regardless of whether the party is fishing commercially, recreationally, or for-hire.

Effective October 15, 2015, federal law requires all commercial fishing vessels (CFVs) operating outside of 3 nautical miles (NM) to obtain a USCG Commercial Fishing Vessel Dockside Safety Examination at least once every five years. To meet the mandatory five-year dockside safety exam requirement, a CFV must have successfully completed an exam on or after January 1, 2013. A CFV that has never been examined should have completed an exam prior to October 15, 2015, to be in compliance. A CFV that successfully completed an exam after January 1, 2013, has five years from the date of that successful exam to complete another exam. CFV safety equipment requirements vary by vessel size, region fished, and distance from shore that commercial fishing activity takes place. Details on the safety equipment requirements and exams can be found at: <https://www.uscg.mil/d13/cfvs/docksideexams.asp>.

There are several designations under which a vessel can be registered, including a CFV, but a vessel that is commercial fishing is defined as “a vessel that commercially engages in the catching, taking, or harvesting of fish which, either in whole or in part, is intended to enter commerce through sale, barter, or trade”². Vessels not having completed a mandatory exam since January 1, 2013, if boarded, can expect to be issued a warning and must contact a fishing vessel examiner within 30 days to schedule the mandatory exam. Subsequent boardings after 30 days will result in the operator being issued a violation.

HMS General Category Permit Holder Information

For the purposes of this paper, a list of HMS commercial general category permit holders was obtained and permit holders with a vessel listing a home port in the South Atlantic Region (North Carolina, South Carolina, Georgia, or the East Coast of Florida) were selected for comparison to the USCG Marine Information for Safety and Law Enforcement (MISLE) database, which is used to store data on marine accidents, pollution incidents, search and rescue cases, law enforcement activities, and vessel inspections/examinations. The vessel ID listed on the HMS commercial general category permit was used to compare records between the USCG MISLE database and the HMS permit holder database. In January 2017, information for vessels with a homeport listed in USCG District 7 (South Carolina through Florida) were compared to a database of vessels that had received a USCG CFV exam since January 1, 2013, which allows the vessel to meet the mandatory exam requirement that went into effect in October 2015. A similar analysis was previously completed by USCG District 5 (North Carolina through New Jersey) for vessels compliant with the exam requirement in 2015, so data from this analysis were used for vessels listing a home port in North Carolina so as not to duplicate effort.

In addition to observing whether a vessel had received a CFV safety exam, the type for each vessel was listed in the MISLE database. Vessel types included in the summary tables were

²Atlantic HMS News List,

http://www.nmfs.noaa.gov/sfa/hms/news/news_list/2017/1/uscg_exam_requirements_013117.html

commercial fishing vessels (CFV), uninspected passenger vessels (UPV), recreational vessels (Rec), inspected vessels (inspected), and “Other.” “Other” vessels were relatively rare in the database and were listed as either a miscellaneous vessel, freight barge, or passenger barge. In some circumstance, a vessel holding an HMS general category permit was not listed in the MISLE database, which could have occurred due to an error in how the vessel ID was entered into one of the databases or that the vessel had never interacted with the USCG.

The results of the comparison between HMS general category permitted vessels and vessel records from the USCG MISLE can be seen separately for HMS Charter/Headboat permits (**Table 1**) and all other HMS commercial general category permits (**Table 2**). Information for all HMS commercial general category permitted vessels by state can be seen in **Appendix 1** and combined information for all South Atlantic states is displayed in **Table 3**. In total, there were 1,097 vessels HMS commercial general category permitted vessels in the South Atlantic Region, with the majority of vessels having a home port in North Carolina (670 vessels) or Florida (336 vessels), followed by South Carolina (69 vessels) and Georgia (22 vessels).

Table 1. Commercial fishing vessel safety exam compliance for South Atlantic vessels holding a HMS Charter/Headboat permit.*

Vessel Type	CFV Safety Exam	Number of Vessels
CFV	No	76
CFV	Yes	36
UPV	No	101
UPV	Yes	93
Rec	No	206
Rec	Yes	0
Other	No	1
Other	Yes	0
Inspected	Not Required	48
Not in CG database	N/A	133
Total		694

*Vessels homeported in Florida, Georgia, and South Carolina were examined for compliance in 2017 while vessels homeported in North Carolina were examined for compliance in 2015.

Table 2. Commercial fishing vessel safety exam compliance for South Atlantic vessels holding a HMS commercial general category permit other than a Charter/Headboat permit.*

Vessel Type	CFV Safety Exam	Number of Vessels
CFV	No	59
CFV	Yes	76
UPV	No	8
UPV	Yes	3
Rec	No	116
Rec	Yes	1
Other	No	2
Other	Yes	0
Inspected	Not Required	6
Not in CG database	N/A	132
Total		403

*Vessels homeported in Florida, Georgia, and South Carolina were examined for compliance in 2017 while vessels homeported in North Carolina were examined for compliance in 2015.

Table 3. Commercial fishing vessel safety exam compliance for all South Atlantic vessels holding a HMS commercial general category permit.*

Vessel Type	CFV Safety Exam	Number of Vessels
CFV	No	135
CFV	Yes	112
UPV	No	109
UPV	Yes	96
Rec	No	322
Rec	Yes	1
Other	No	3
Other	Yes	0
Inspected	Not Required	54
Not in CG database	N/A	265
Total	-	1,097

*Vessels homeported in Florida, Georgia, and South Carolina were examined for compliance in 2017 while vessels homeported in North Carolina were examined for compliance in 2017.

Discussion

In regards to vessel type and CFV requirements, a USCG inspected small passenger vessel (inspected) does not need a CFV safety inspection because the safety requirements (46 CFR subchapter T) are more stringent than those for an uninspected CFV (46 CFR part 28). As such, inspected vessels meet and exceed the safety standards for a CFV.

Vessels registered as a CFV and operating beyond 3 NM are required to have a CFV exam at least every 5 years beginning January 1, 2013. Successfully completing an exam will earn the vessel a CFV safety decal that is valid for two years. Vessels with a valid decal can expect to see abbreviated boarding times. Those vessels with decals that have expired can expect

boarding officers to conduct a more extensive examination of the vessels required safety equipment. Fishing vessels that are required to carry NMFS observers are required to have a valid decal.

If the vessel is registered as "recreational," it should not be operating commercially, meaning no sale of catch and/or no carrying passengers for-hire. If a vessel is taking paying passengers out to fish (i.e., for-hire) and not selling the catch when they return to shore, the vessel is not required to undergo a CFV exam. However, in order to legally take passengers out, the vessel must be either an inspected vessel (more than 6 passengers) or a UPV (6 or less passengers), which means the vessel must meet the requirements in 46 CFR part C for uninspected passenger vessels, and it must be operated by a licensed master. If a UPV is carrying paying passengers, and intending to sell their catch, the vessel would need to meet the most stringent of the regulations for both CFV and UPV, would need a licensed master, and if the vessel go beyond 3NM, it would be required to get a CFV safety exam. One exception that may occur for a UPV that is taking passengers out sportfishing, is when the party returns to the dock and if the passengers do not want to keep their catch, they can sell their catch without having to have the CFV exam or a fisheries endorsement provided that the vessel operator or crew has the correct commercial permit and sale of the species is allowed. This is allowable because the intent of their business was taking passengers fishing, they were not intending to harvest fish to sell, and the sale of the fish is incidental to their business.

As can be seen in **Table 1** through **Table 3**, many HMS general category permitted vessels were not in the MISLE as receiving a CFV safety exam at the time that the analysis was performed. This suggests that there are several boats not in compliance with the CFV safety requirement, which is necessary for vessels fishing commercially beyond 3 NM. Although there are some circumstances where HMS species may be targeted within 3 NM, such as bluefin tuna at certain times in North Carolina, it is unlikely that many HMS species will be encountered within 3 NM in most situations. From an enforcement standpoint, the CFV safety exam requirement can be difficult to enforce for vessels not registered as a CFV unless the vessel is boarded outside of 3NM and in possession of a fish that is of only commercial size, kept in commercial quantities, or if it can be verified that the fish was later sold after the vessel was boarded or noted outside of 3 NM.

It is important to again note the dual purpose of the HMS Charter/Headboat permit, in that it allows the sale of some HMS species, but also is a requirement to take paying passengers recreational fishing for HMS species. Permit holders who do not fish commercially are still required to obtain the permit to operate their charter business while harvesting HMS species. This situation likely has led to some misunderstanding in regards as to whether a CFV is required as part of the HMS permit. Overall, the intention of the HMS Charter/Headboat permit holder is unclear as far as participation in commercial fishing activity. Splitting the sale and no-sale components of the Charter/Headboat permit could help better establish the intention of the HMS permit holder and clarify the vessel safety requirements. It has been the recommendation of both the Mid-Atlantic Fishery Management Council as well as the National Association of Charterboat Operators for NOAA Fisheries HMS to pursue this option.

Actions Taken Addressing Compliance

As a result of the inquiries brought forth regarding safety gear requirements for vessels with permits that allow the sale of their catch, the U.S. Coast Guard and NOAA Fisheries HMS have partnered to remind fishermen of the safety gear and exam requirements. On January 31, 2017, the USCG and NOAA Fisheries provided a statement and news release reminding HMS commercial permit holders of the CFV exam requirements. Additionally, the USCG has taken action by notifying commercial vessel examiners of the findings from this and related analyses and will continue to follow up with HMS permitted vessels fishing commercially. It is believed that compliance will improve through targeted outreach and education of the CFV safety exam requirement coupled with on the water enforcement.

Appendix 1. Commercial fishing vessel safety exam compliance by state for all South Atlantic home-ported vessels holding a HMS commercial general category permit.*

State	Vessel Type	CFV Safety Exam	Number of Vessels
Florida (FL)	CFV	No	29
	CFV	Yes	19
	UPV	Yes	0
	UPV	No	66
	Rec	No	112
	Rec	Yes	0
	Inspected	Not Required	28
	Not in CG database	N/A	82
	FL Total		336
Georgia (GA)	CFV	No	0
	CFV	Yes	1
	UPV	Yes	0
	UPV	No	7
	Rec	No	2
	Rec	Yes	0
	Inspected	Not Required	1
	Not in CG database	N/A	11
	GA Total		22
South Carolina (SC)	CFV	No	4
	CFV	Yes	1
	UPV	Yes	0
	UPV	No	17
	Rec	No	23
	Rec	Yes	0
	Inspected	Not Required	2
	Not in CG database	N/A	22
	SC Total		69
North Carolina (NC)	CFV	No	102
	CFV	Yes	91
	UPV	No	109
	UPV	Yes	6
	Rec	No	185
	Rec	Yes	1
	Inspected	Not Required	23
	Not in CG database	N/A	150
	Other	No	3
	Other	Yes	0
	Total		670
All States	CFV	No	135
	CFV	Yes	112
	UPV	No	109
	UPV	Yes	96
	Rec	No	322
	Rec	Yes	1
	Inspected	Not Required	54
	Not in CG database	N/A	265
	Other	No	3
	Other	Yes	0
	Total		1,097

*Vessels homeported in Florida, Georgia, and South Carolina were examined for compliance in 2017 while vessels homeported in North Carolina were examined for compliance in 2015.