

Modification of For-hire Multi-day Trip Possession Limits



Generic Framework Action to the Fishery Management Plans for Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic Region

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ENVIRONMENTAL ASSESSMENT COVER SHEET

Name of Action

Generic Framework Action to the Fishery Management Plans for Reef Fish Resources in the Gulf of Mexico and Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic Region: Modification of For-hire Multi-day Trip Possession Limits including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis.

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() Administrative
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ABBREVIATIONS USED IN THIS DOCUMENT

ABC	acceptable biological catch
ACL	annual catch limit
ACT	annual catch target
AM	accountability measures
APAIS	Access Point Angler Intercept Survey
comm	commercial
Council	Gulf of Mexico Fishery Management Council
CS	consumer surplus
DPS	distinct population segment
EA	environmental assessment
EFH	essential fish habitat
EFP	exempted fishing permits
EIS	environmental impact statement
EJ	environmental justice
ESA	Endangered Species Act
FMP	Fishery Management Plan
GMFMC	Gulf of Mexico Fishery Management Council
Gulf	Gulf of Mexico
HAPC	habitat areas of particular concern
IFQ	individual fishing quotient
IPCC	Intergovernmental Panel on Climate Change
IRFA	initial regulatory flexibility analysis
LAPP	Limited Access Privilege Program
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MFMT	maximum fishing mortality threshold
MMPA	Marine Mammals Protection Act
MRFSS	Marine Recreational Fisheries Statistics Survey
MRIP	Marine Recreational Information Program
MSST	minimum stock size threshold
NAICS	North American Industry Classification System
NARW	North Atlantic right whale
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOR	net operating revenue
OFL	overfishing limit
opinion	biological opinion
PAH	polycyclic aromatic hydrocarbons
PS	producer surplus
rec	recreational
RFA	Regulatory Flexibility Act
RFFA	reasonably foreseeable future action
RIR	regulatory impact review
RQ	regional quotient

Secretary	Secretary of Commerce
SEDAR	Southeast Data, Assessment, and Review process
SEFSC	Southeast Fisheries Science Center
SERO	NMFS Southeast Regional Office
SPR	spawning potential ratio
SRHS	Southeast Region Headboat Survey
SSB	spawning stock biomass
SSC	Scientific and Statistical Committee
TAC	total allowable catch
TL	total length
TPWD	Texas Parks and Wildlife Department
tpy	tons per year
USCG	United States Coast Guard

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CHAPTER 1. INTRODUCTION

1.1 Background

In federal waters of the Gulf of Mexico (Gulf), persons aboard a vessel with a federal Gulf charter/headboat permit for reef fish or coastal migratory pelagic fish (for-hire permit) that is operating as a for-hire trip are generally allowed to possess two daily bag limits of species managed under the Fishery Management Plan for Reef Fish Resources in the Gulf (Reef Fish FMP) and the FMP for Coastal Migratory Pelagic Resources in the Gulf and South Atlantic Region (CMP FMP) under certain conditions. Specifically, the for-hire trip must exceed 24 hours in duration, the vessel must have two United States Coast Guard (USCG) licensed captains on board, the fish must have been caught in federal waters, and every passenger must have a receipt for the fishing trip which verifies the length of the trip (50 C.F.R. § 622.38(c)). The three exceptions to the two-day bag limit allowance are for Gulf migratory group of cobia, speckled hind, and Warsaw grouper.¹ Further, the ability for anglers to retain two daily bag limits comes into effect after the trip duration has exceeded 24 hours; meaning, that during the first 24 hours of the trip, each person may only possess one daily bag limit (50 C.F.R. § 622.11(a)(1); Appendix A).

The Gulf of Mexico Fishery Management Council (Council) heard testimony at its meeting in June 2019 that some vessel captains may have misinterpreted the regulations to allow the retention of two daily bag limits at any time during a trip that lasts more than 24 hours. According to testimony, allowing anglers to retain the possession limit at any time during the multi-day trip could increase the efficiency of the trip and reduce regulatory discards, adding that the practice of chumming or baiting fish is time intensive, as is releasing any undersized fish. For example, some vessels prefer to target one species at a time in spots in which that species is prolific, fishing until the two-day bag limit per angler (for the planned multi-day trip) has been retained to minimize discard mortality and increase fishing efficiency. After the two-day bag limit per angler has been retained, the vessel captains actively attempt to avoid that species for the remainder of the multi-day trip. Current regulations prohibit such vessel captains from allowing anglers to retain the second bag limit until 24 hours of the trip have passed, requiring those captains to resume fishing for the target species. If for-hire vessels were allowed to possess the second bag limit within the initial 24 hours of a trip that lasts more than 24 hours, a vessel operator would be able to allow passengers to possess the second bag limit at the time of chumming or baiting fish at the initial fishing spot, which testimony indicated could increase trip efficiency and potentially reduce discards.

The total number of vessels with a charter vessel/headboat permit for reef fish or CMP fish that operate trips greater than 24 hours in duration is unknown. According to data from federal for-hire headboat vessels sampled from 2009 – 2018 by the National Marine Fisheries Service's (NMFS) Southeast Region Headboat Survey (SRHS), approximately 43 headboats on average reported making trips in excess of 24 hours in duration (Table 1.1.1, Figure 1.1.1). These vessels averaged just over 6 trips per year each, with a 10-year average of 236 trips/year in excess of 24

¹ The possession of Gulf migratory group cobia is two per person per day regardless of the duration of a trip. The bag limit for speckled hind and Warsaw grouper is one fish per vessel per day.

hours made by all headboats combined. During this period, the number of headboats making trips in excess of 24 hours in duration has gradually increased and the number of trips in excess of 24 hours taken by those vessels increased steadily from 183 trips in 2009 to 310 trips in 2018. These data suggest that the same vessels are making more trips in excess of 24 hours per year. It is important to note that not all headboats are selected to report through the SRHS; therefore, these data from the SRHS should be considered representative of the Gulf headboat fleet, but not comprehensively so.

Table 1.1.1. Summary of the number of federal for-hire headboats in the SRHS that made trips exceeding 24 hours, and the number of trips, by year for 2009 – 2018.

Year	Total Number of Headboats	Total Number of Trips over 24 hours	Mean Trips per Vessel
2009	36	183	5
2010	34	172	5
2011	41	203	5
2012	42	230	5
2013	43	219	5
2014	49	241	5
2015	47	258	5
2016	39	258	7
2017	46	285	6
2018	48	310	6
Mean	43	236	6

Source: SRHS data from 2009–2018 for Gulf of Mexico data collection zones. Data retrieved on 28 June 2019.

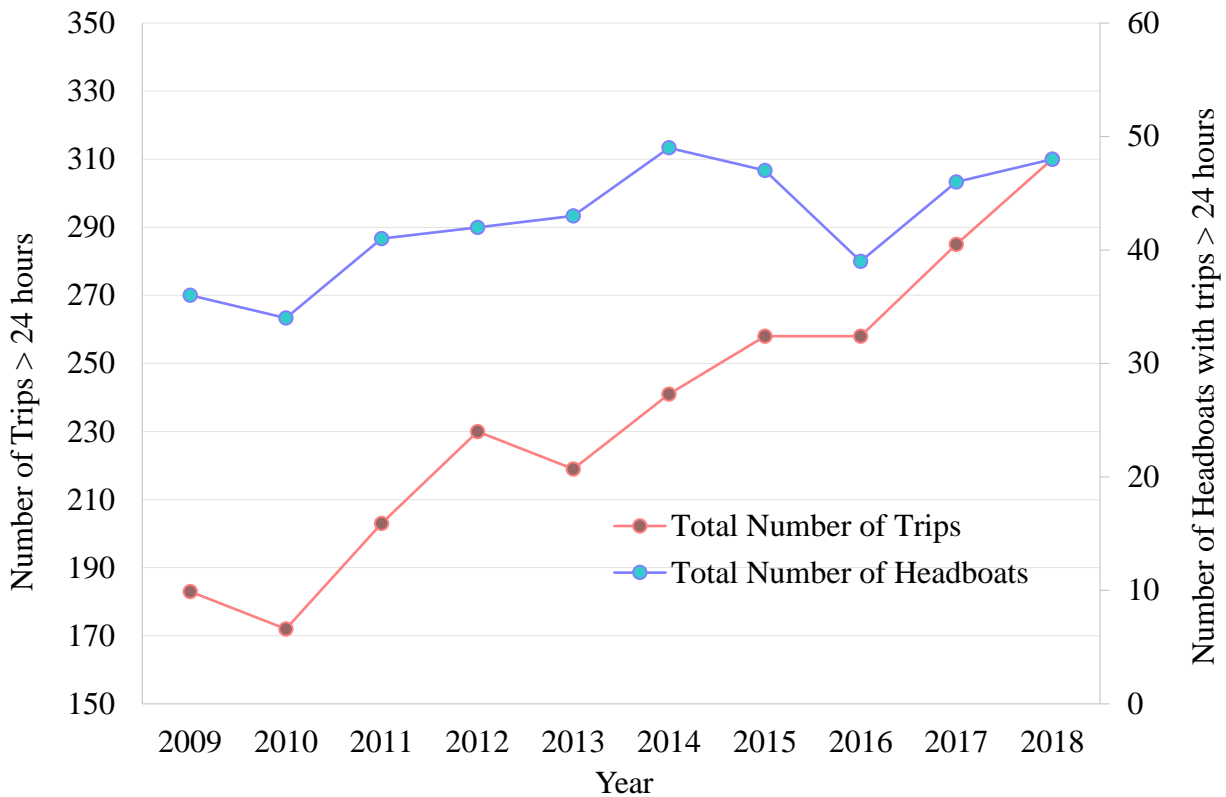


Figure 1.1.1. Summary of the number of federal for-hire headboats in the SRHS that made trips exceeding 24 hours, and the number of trips, by year for 2009 – 2018.

Source: SRHS data from 2009–2018 for Gulf of Mexico data collection zones. Data retrieved on 28 June 2019.

Figure 1.1.2 shows the same data used in Figure 1.1.1, combined across all years (2009 – 2018), and separated by the trip duration category reported to the SRHS. Trip duration is defined as the amount of time that elapsed between when the vessel left the dock to when the vessel returned to the dock. The four trip categories used in this analysis were “two days” (24 hours to 35 hours, 59 minutes), “three days” (36 hours to 47 hours, 59 minutes), “four days” (48 hours to 59 hours, 59 minutes), and “five days” (60 hours to 71 hours, 59 minutes). These trip duration categories were selected because they are thought to represent the overwhelming majority of headboat vessel trips exceeding 24 hours in duration in the Gulf. These data indicate that the majority (80.1%) of trips greater than 24 hours in duration made by headboats participating in the SRHS are “two day” and “three day” trips, or trips between 24 hours and 47 hours, 59 minutes in duration. Although not illustrated in Figure 1.1.2, it should be noted that the total number of headboat trips in excess of 24 hours in duration taken between 2009 – 2018 accounts for only ~2.6% of all headboat trips of any duration recorded by the SRHS for the same time period.

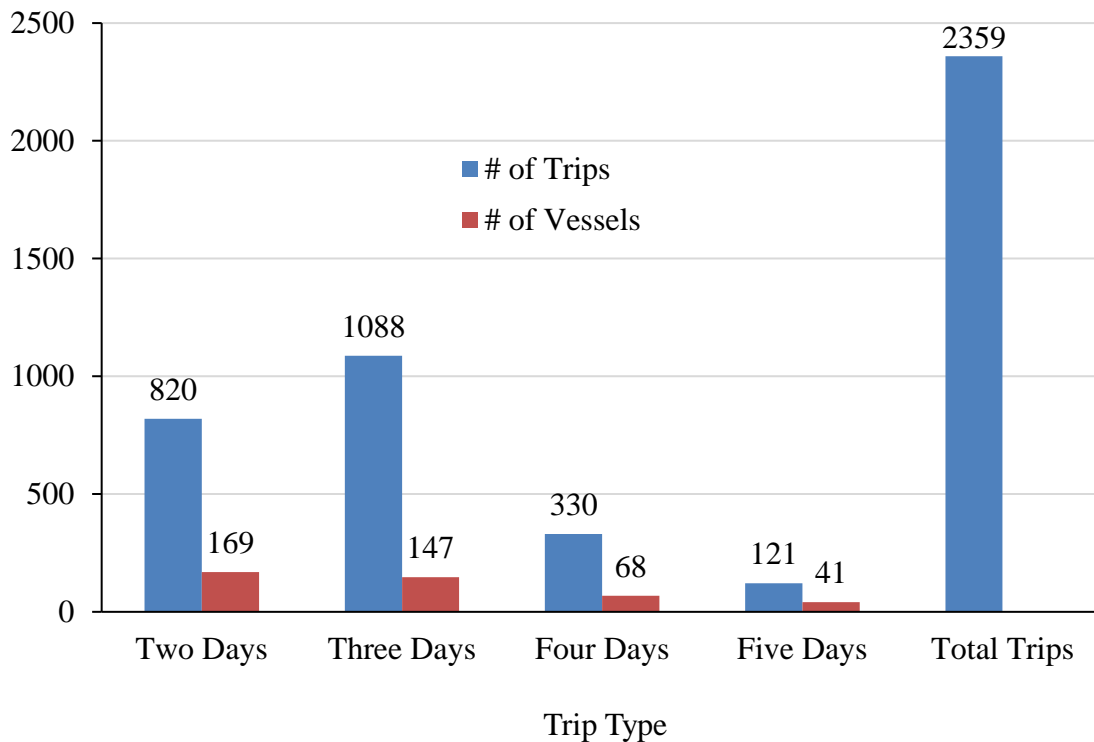


Figure 1.1.2. Total number of trips and total number of vessels reporting to the SRHS from 2009 – 2018 by SRHS trip type, denoted on the x-axis, including the total number of trips for all included trip types.

Source: SRHS data from 2009–2018 for Gulf of Mexico data collection zones. Data retrieved on 28 June 2019.

Additionally, it is likely that some vessels operating as charter vessels (i.e., federally permitted for-hire vessels that do not participate in the SRHS) take paying passengers on trips lasting more than 24 hours. The Marine Recreational Information Program (MRIP) survey records boat hours ('BOAT_HRS'), which captures the time from when the vessel leaves dock to when the vessel returns to the dock. Unfortunately, this information is not collected in the Gulf. The MRIP survey in the Gulf records the 'hours fished' for trips intercepted. From the last five years (2014 – 2018), 34,164 MRIP intercepts captured a reef fish or coastal migratory pelagic species with 'hours fished' recorded to the nearest half hour (Table 1.1.2.). No charter or private angling trips reported fishing more than 24 hours and only twelve charter trips (<0.1%) reported fishing more than 12 hours.

Table 1.1.2. The number of MRIP intercepts from 2014 through 2018 from the Gulf (AL, FL, and MS) that captured a reef fish or coastal migratory pelagic species by mode and hours fished (i.e., time spent fishing, not time from dock to dock).

Mode	Hours Fished	Number of Intercepts
Charter	0-6	12,888
Charter	6-12	790
Charter	12-18	9
Charter	18-24	3
Private	0-6	17,220
Private	6-12	3,212
Private	12-18	31
Private	18-24	11

Source: MRIP survey data, available at https://www.st.nmfs.noaa.gov/st1/recreational/MRIP_Survey_Data/. [Accessed July 16, 2019].

The Texas Parks and Wildlife Division (TPWD) does record trip duration (i.e., from dock to dock) for survey intercepts. From 2013 through 2017 (TPWD data from 2018 are not available at this time), 3,276 intercepts recorded a reef fish or coastal migratory pelagic species and had the trip duration recorded to the nearest half hour. No charter or private angling trips were recorded with a duration exceeding 12 hours (Table 1.1.3.).

Table 1.1.3. The number of TPWD intercepts from 2013 through 2017 from Texas recording a reef fish or coastal migratory pelagic species by mode and trip duration. TPWD data for 2018 are not available at this time.

Mode	Trip Duration (Hours)	Number of Intercepts
Charter	0-6	197
Charter	6-12	261
Private	0-6	1,213
Private	6-12	1,605

Source: TPWD files [July 10, 2018].

In response to the public comment noted above, the Council decided to begin work on this generic framework action to examine options for modifying the requirements for the possession of two daily bag limits on appropriately compliant for-hire vessels (those with two USCG-licensed captains, on trips exceeding 24 hours in duration, and with all anglers in possession of a receipt indicating the trip duration). The Council requested options for the necessary trip duration and when exactly the two-day bag limit could be possessed on board the subject vessel.

1.2 Purpose and Need

The purpose of this action is to modify requirements for the multi-day possession limit for persons aboard federal for-hire vessels.

The need for this action is to promote efficiency in the utilization of the reef fish and CMP resources and a potential decrease in regulatory discards by providing the owners and operators of federally permitted for-hire vessels greater flexibility in determining when to allow passengers to retain the possession limit on multi-day trips.

1.3 History of Management

This history of management focuses on events pertinent to possession limits on federal for-hire vessels. A complete history of management for the Reef Fish FMP and CMP FMP are available on the Council's website at <http://gulfcouncil.org/fishery-management/implemented-plans/reef-fish/>, and <http://gulfcouncil.org/fishery-management/implemented-plans/coastal-migratory-pelagics/>, respectively.

Reef Fish

The final rule for the **Reef Fish FMP** (GMFMC 1981) was effective November 8, 1984, and defined the reef fish fishery management unit. The Reef Fish FMP established an exemption to the minimum size limit to possess five undersized red snapper per person, among other regulatory actions.

Amendment 1 (GMFMC 1989) established the allowance for a 2-day possession limit for for-hire vessels on trips that extend beyond 24 hours provided the vessel has two licensed operators aboard as required by the U.S. Coast Guard, and each passenger can provide a receipt to verify the length of the trip. All other fishermen fishing under a bag limit are limited to a single day possession limit. The amendment also established bag limits (e.g., red snapper, aggregate grouper and snapper, and greater amberjack) and minimum size limits for many reef fish species, among other actions.

In 1996, NMFS consolidated 11 code of federal regulations (CFR) parts into one new CFR part, including Gulf reef fish regulations and Gulf and South Atlantic CMP regulations (61 FR 47821). The intended effect of this final rule was to make the regulations more concise, better organized, more uniform among fisheries, and thereby easier for the public to use. However, some changes were inadvertently made that resulted in unintended substantive changes to some regulations. Through this consolidation of regulations, language was added to section pertaining to the 2-day possession limit on for-hire trips that extend beyond 24 hours, to state that the second bag limit may not be retained until 24 hours had elapsed on the trip.

Secretarial Amendment 1 (GMFMC 2004) included several actions for the management of red grouper, including the reduction in the bag limit to two red grouper within the five aggregate grouper bag limit per person. The amendment stated that "it is the Council's intent that the

double bag limit allowance apply on qualified for-hire vessels that are out over 24 hours” (GMFMC 2004:14).

Bag limit for Captain and Crew of For-hire Vessels

A series of regulatory actions alternately prohibited then allowed the captain and crew on for-hire trips to retain a bag limit of red snapper or other reef fish. A **January 1998 Regulatory Amendment** (GMFMC 1998a) proposed setting a zero bag limit for the captain and crew of for-hire vessels to extend the red snapper season for the recreational sector, but the provision was not implemented. A **December 1998 Regulatory Amendment** (GMFMC 1998) prohibited the captain and crew of for-hire vessels from retaining a bag limit of red snapper and reduced the bag limit to 4 red snapper for recreational fishermen. A **February 2000 Regulatory Amendment** (GMFMC 2000) reinstated the allowance for captain and crew of for-hire vessels to retain a red snapper bag limit. **Joint Reef Fish Amendment 27/Shrimp 14** (GMFMC 2007) prohibited retention of a bag limit for red snapper by captain and crew on for-hire vessels and reduced the recreational bag limit to two fish.

A **November 2005 Regulatory Amendment** (GMFMC 2006) prohibited the captain and crew of for-hire vessels from retaining a bag limit of grouper when under charter and reduced the recreational bag limit for red grouper.

Amendment 30A (GMFMC 2008) added greater amberjack to the reef fish species of which captain and crew may not retain a bag limit.

CMP

The final rule for the **CMP FMP** (GMFMC 1983) defined the CMP fishery management unit.

A **May 1986 Regulatory Amendment** (GMFMC 1986) set the king mackerel bag limit at two fish for persons fishing from boats without a captain and crew and three fish for persons fishing from boats with a captain and crew (i.e., for-hire boats), excluding the crew.

Amendment 5 (GMFMC 1990) redefined recreational bag limits from trip limits to daily limits, such that recreational bag limits apply per person per day with a one-day possession limit. The amendment also established a 2-day possession limit for for-hire vessels on multi-day trips provided that two qualified captains are aboard and anglers have been provided with receipts for multi-day trips.

Bag limit for Captain and Crew of For-hire Vessels

A series of regulatory actions alternately prohibited then allowed the captain and crew on for-hire trips to retain a bag limit. A **May 1996 Regulatory Amendment** (GMFMC 1996) prohibited the captain and crew on for-hire vessels from retaining a bag limit of king mackerel. A **May 1997 Regulatory Amendment** (GMFMC 1997) removed the prohibition on a captain and crew on for-hire vessels from retaining a bag limit. A **May 1998 Regulatory Amendment** (GMFMC 1998c) prohibited the captain and crew on for-hire vessels from retaining a bag limit

of king mackerel. A **July 1999 Regulatory Amendment** (GMFMC 1999) established a 2-fish per person per day bag limit on Gulf group king mackerel for the captain and crew of for-hire vessels; however, the captain and crew bag limit was rejected by NMFS. A **July 2000 Regulatory Amendment** (GMFMC 2000) removed the prohibition for a 2-fish king mackerel bag limit for captain and crew of for-hire vessels.

CHAPTER 2. MANAGEMENT ALTERNATIVES

2.1 Action 1 – Modification of For-hire Multi-day Trip Possession Limits for Gulf of Mexico (Gulf) Reef Fish and Coastal Migratory Pelagic (CMP) Species

Alternative 1: No Action. The on-board possession limit for federal for-hire trips exceeding 24 hours in duration in the Gulf will be two daily bag limits per angler (or vessel for speckled hind and Warsaw grouper), excluding captain and crew. The second daily bag limit cannot be retained until 24 hours have elapsed since the vessel left the dock.

Alternative 2: The on-board possession limit for federal for-hire trips in the Gulf exceeding a given trip duration (Options 2a-2c) will be two daily bag limits per angler (or vessel for speckled hind and Warsaw grouper), excluding captain and crew. The second daily bag limit can be retained anytime during a trip with a minimum trip duration of:

Option 2a: Greater than 24 hours

Option 2b: Greater than 30 hours

Option 2c: Greater than 36 hours

Discussion:

On trips exceeding 24 hours in duration, Gulf federally permitted for-hire vessels are allowed to possess two daily bag limits per angler of species managed by the Fishery Management Plan (FMP) for Reef Fish Resources in the Gulf and the FMP for Coastal Migratory Pelagic (CMP) species in the Gulf and the South Atlantic Regions (CMP FMP), with the exception of the Gulf migratory group of cobia, speckled hind, and Warsaw grouper which are under separate respective possession limits. The for-hire trip must comply with the conditions of exceeding 24 hours in duration, have two USCG licensed captains onboard, and every passenger must be in possession of a receipt verifying trip duration (50 CFR 622.38(c)). Further, the ability to retain a two-day bag limit only comes into effect once the trip duration has exceeded 24 hours, meaning that, in the first 24 hours of the trip, each person may only possess one daily bag limit (50 CFR 622.11(a)(1)). For the purpose of daily bag limits, trip duration must coincide with an open fishing season for each species, and any fish retained may only be landed while the fishing season is open for each species. For example: a federal for-hire vessel departs at 7:00 AM on May 31 on a trip with a duration of 36 hours, planning to return to the dock at 7:00 PM on June 1. If this vessel targets red snapper (the for-hire season opens June 1), the anglers on the vessel may only retain one daily bag limit, since the fishing season for red snapper would have only been open for one of the two calendar days during which the vessel's trip was under way, and the retained red snapper must have been landed on June 1.

Alternative 1 would not change the current regulations and anglers on federal for-hire trips would continue to be limited to a single day's bag limit for each applicable species until after the first 24 hours of the trip. According to public testimony, this scenario results in inefficiencies in

for-hire fishing effort by requiring vessels to move off a successful set (when the fish are biting the baits vigorously) which may increase discard mortality.

Alternative 2 would modify the on-board possession limit for federal for-hire trips in the Gulf exceeding a given trip duration as specified in **Options 2a-2c**. Retention of the second daily bag limit would be allowed at any time after the federal for-hire vessel leaves the dock. All other requirements to retain the possession limit would be unchanged. Options for the trip duration requirement in **Alternative 2** are greater than 24 hours in duration (**Option 2a**), greater than 30 hours in duration (**Option 2b**), and greater than 36 hours in duration (**Option 2c**). The number of federal for-hire vessels operating as headboats, and participating in the Southeast Region Headboat Survey (SRHS), is shown in Table 1.1.1 and Figure 1.1.1. These data indicate that although the number of vessels in the SRHS making trips greater than 24 hours in duration has remained relatively static from 2009 – 2018, the number of trips made by these vessels has increased during this time period. It is important to note that the SRHS data do not include charter vessels, for which this type of data is not available. It is possible that the number of trips made by these vessels could change, as could the duration of the trips they make and when the second bag limit may be possessed, if the trip duration requirement for the possession of two daily bag limits increases above 24 hours.

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APPENDIX A. CURRENT REGULATIONS ON POSSESSION LIMITS

§622.11 Bag and possession limits—general applicability.

This section describes the general applicability provisions for bag and possession limits specified in subparts B through V of this part.

(a) Applicability. (1) The bag and possession limits apply for species/species groups in or from the EEZ. Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, a person is limited to a single bag limit for a trip lasting longer than one calendar day. **Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip.** The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person aboard a vessel in the EEZ that has on board the commercial vessel permit required under this part for the appropriate species/species group. The possession of a commercial vessel permit notwithstanding, the bag and possession limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in subparts B through V of this part with a bag or possession limit applicable to state waters. A species/species group subject to a bag limit specified in subparts B through V of this part taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ. The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in subparts B through V of this part are not exceeded.

(2) [Reserved]

(b) [Reserved]