

**ECONOMIC AND SOCIAL IMPACT ASSESSMENT FOR
A PROPOSED RULE TO ADDRESS PERMIT TRANSFER
AND RENEWAL REQUIREMENTS FOR GULF OF
MEXICO CHARTER/HEADBOAT PERMITS**

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CHAPTER 1. REGULATORY IMPACT REVIEW

1.1 Introduction

The National Marine Fisheries Service (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 the proposed regulations are a "significant regulatory action" under the criteria provided in Executive Order (E.O.) 12866. This RIR analyzes the expected economic impacts of a proposed emergency action to allow vessels with commercial reef fish permits to temporarily suspend their permit.

1.2 Problems and Objectives

The U.S Coast Guard (USCG) issues Certificates of Inspection (COI) to vessels that carry passengers for hire (see <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=3e5be7bd288dcb12a5993d1b8fdd8879&rgn=div5&view=text&node=46:1.0.1.1.2&idno=46>). For small passenger vessels, a COI is required for vessels less than 100 gross tons that carry more than six passengers, including at least one passenger for hire, and vessels must be inspected annually. The COI indicates that the vessel has passed a safety inspection and is in compliance with all the federal regulations that allows the vessel to carry passengers. Included in the COI is specification of the number of passengers the vessel is certified to carry. Because boats may offer different services, such as fishing or sightseeing, or operate in different waters, such as inshore, within three miles from shore, or outside of three miles from shore, a COI may list more than one passenger capacity tied to different cruise circumstances. For example, a COI may limit passenger capacity for a certain vessel to 40 persons but provide an exception that allows up to 50 passengers if operating not more than 1 mile from land.

In 2003, moratoria were established for the charter/headboat permits (hereafter referred to as a for-hire permit) for the Gulf of Mexico (Gulf) coastal migratory pelagics (CMP) and reef fish fisheries (GMFMC 2003). The intended effect of these moratoria was to cap the effort and passenger capacity of for-hire vessels operating in these fisheries at the level documented in March 2001 while the Council evaluated whether limited access programs were needed to permanently constrain effort.

These moratoria were extended indefinitely in June 2006 (GMFMC 2005). Implementing regulations associated with the moratoria state 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.”

In addition to applying to the transfer of a Gulf for-hire permit, the passenger capacity limit also applies to permit renewal. For COIs that list multiple passenger capacities, the largest passenger capacity listed on the COI, even if it applies to non-fishing vessel operations, is used in the determination of whether or not a for-hire permit renewal or transfer can be approved. As a result, for-hire permits cannot be renewed on a vessel for which the COI lists a higher passenger capacity than that listed on the for-hire permit, nor can a vessel receive through transfer a for-hire permit with a passenger capacity less than the passenger capacity listed on the recipient vessels' COI.

The following are two examples of the problem:

Example 1: A vessel normally fishes offshore (more than three miles from shore), and has a COI and for-hire permit that both list the passenger capacity at 50 persons. The owner of the vessel diversifies the services their business provides to include eco-tours of inshore waters (three miles or less from shore) and obtains a new COI that allows the passenger capacity to increase to 60 persons when operating not more than three miles from shore because of the, generally, calmer waters nearer to shore and the reduced space demands of passengers when not fishing. When the for-hire permit for this vessel is submitted for renewal, NMFS would refuse to renew the permit because the new maximum passenger capacity listed on the COI is 60 persons, which is greater than the passenger capacity listed on the for-hire permit (50 persons).

Example 2: An application is made to transfer a permit from one vessel to another. The first vessel has a for-hire permit and a 50-person passenger capacity, and the second vessel has a COI for 60-persons. The owner of the second vessel would like to purchase the for-hire permit from the first vessel and transfer it to the second vessel. In this situation, NMFS would not approve the transfer because the recipient vessel has a passenger capacity greater than the capacity listed on the for-hire permit. When the application to transfer the for-hire permit from the first vessel to the second vessel is submitted, NMFS would refuse to transfer the permit because the new maximum passenger capacity listed on the COI is 60 persons, which is greater than the passenger capacity listed on the for-hire permit (50 persons).

In both examples, NMFS would not approve the action, renewal or transfer, because of the larger maximum passenger capacity listed on the COI. Disapproval would occur regardless of how much larger the COI passenger capacity is or the circumstances (vessel use or waters of operation) under which the larger capacity applies.

In order to either renew the for-hire permit or complete the transfer, the vessel owner would have to obtain a new COI that limited the passenger capacity to the lower quantity listed on the for-hire permit. Thus, although the transaction could be completed (renewal or transfer), the vessel owner would not be able to carry the full passenger capacity authorized (by the USCG) for safe

operation and, as a result, would not be able to receive the maximum economic benefits from their vessel operation.

NOAA General Counsel requested the Gulf of Mexico Fishery Management Council (Council) discuss how best to address this issue. A white paper was presented at the Council's February 2013 meeting titled "Issues and Options Related to Passenger Capacity in the Limited Entry Gulf of Mexico For-Hire Fishery" (Appendix A). After reviewing the issue, the Council recommended that the regulations be revised to limit the maximum passenger capacity of a for-hire vessel, when operating as a for-hire fishing vessel, to the passenger capacity specified on the face of the for-hire permit because that value represents the fishing effort allowed by the vessel that qualified for the permit in March of 2001, and not restrict the transfer or renewal of the permit based on the passenger capacity on the COI.

In response to this request, this proposed action would eliminate the requirement to submit a current USCG COI with the application to renew or transfer a federal Gulf for-hire permit and prohibit the harvest or possession of reef fish and CMP species on vessels with a Gulf for-hire permit that is carrying more passengers than is specified on the face of the for-hire permit. As a result, the requirements to renew or transfer a for-hire permit would be simplified and for-hire effort control in the reef fish and CMP fisheries would be maintained.

1.3 Description of the Fishery

This proposed action would be expected to affect charter vessels and headboats permitted to operate in the Gulf reef fish and CMP fisheries. Descriptions of the Gulf reef fish fishery are contained in GMFMC (2011; general reef fish), GMFMC (2012; grouper), and GMFMC (2013; red snapper) and are incorporated herein by reference. Descriptions of the Gulf CMP fishery are contained in GMFMC/SAFMC (2011) and GMFMC/SAFMC (2013) and are incorporated herein by reference.

This proposed action would affect charter vessels and headboats with federal permits to harvest reef fish or CMP species in the Gulf. These vessels are part of the for-hire fleet. A federal for-hire permit is required to harvest these species in the Exclusive Economic Zone (EEZ) in the Gulf. On March 1, 2013, 1,348 vessels had a valid or renewable reef fish for-hire permit and 1,377 vessels had a valid (non-expired) or renewable CMP for-hire permit. An expired permit is renewable for one year from expiration. Many for-hire vessels have both the reef fish and CMP charter for-hire permits and 1,440 unique vessels had one (either a reef fish or CMP permit) or both for-hire permits.

The for-hire permits do not distinguish between charter vessels and headboats, though information on the primary method of operation is collected on the permit application form. Some vessels may operate as both a charter vessel and a headboat, depending on the season or purpose of the trip. Headboat effort and harvest data, however, is collected through the NMFS Southeast Fisheries Science Center Headboat Survey program. Participation in the survey program varies, but an estimated 80 headboats participate in the survey and have either a reef fish or CMP for-hire permit. As a result, among the 1,440 vessels with at least one for-hire

permit, 80 are believed to primarily operate as headboats and 1,360 primarily operate as charter vessels.

Although charter vessels tend to be smaller, on average, than headboats, the key distinction between the two types of operations is how the fee is determined. On a charter vessel trip, the fee charged is for the entire vessel regardless of how many passengers are carried. The fee charged for a headboat trip is paid per individual angler (per “head”). Information on Gulf charter vessel and headboat operating characteristics, including average fees and net operating revenues, is included in Savolainen et al. (2012) and is incorporated herein by reference. The average charter vessel is estimated to earn approximately \$81,700 (2012 dollars) and the average headboat is estimated to earn approximately \$247,000 (2012 dollars).

Because this action would affect permit transferability, this action would also affect for-hire vessels that do not have a federal for-hire permit that attempt to purchase and transfer a federal for-hire permit from a permitted vessel. The number of for-hire vessels that do not have a federal for-hire permit is unknown. The information on vessel operating characteristics, including average annual revenue, contained in Savolainen et al. (2012), however, applies to all for-hire vessels regardless of permit status.

1.4 Economic Impacts of the Proposed Action

The proposed elimination of the requirement to submit a current USCG COI with the application to renew or transfer a federal Gulf for-hire permits would be expected to allow permit transfers and renewals to occur in a more timely and efficient manner, cause less disruption in vessel operation, and result in increased for-hire revenue. Vessels with a higher passenger maximum capacity on their COI than on their for-hire permit, in the case of permit renewals, or on the for-hire permit they are attempting to acquire through transfer, would not be required to obtain a new COI with an adjusted (lower) passenger capacity. As a result, these vessels would not have to incur the costs associated with re-inspection or reduced revenue associated with the operational delay the re-inspection may precipitate. Vessels that provide non-fishing for-hire services could carry more passengers, subject to the passenger capacity specified by their COI, than when fishing and not be limited to the lower passenger specified by their for-hire permit. As a result, revenue from these services could be increased.

The proposed prohibition on the harvest or possession of reef fish and CMP species on vessels with a Gulf for-hire permit that is carrying more passengers than is specified on the for-hire permit would be expected to reduce revenue for vessels that may previously have carried more passengers than specified on their for-hire permit, though few vessels are expected to have engaged in this practice. Current regulation, although intended to limit effort per vessel to the number of passengers on the original moratorium permit, only places passenger restrictions on the renewal or transfer of for-hire permits; no passenger restrictions are placed on the vessel when engaged in fishing. In theory, the restrictions placed on permit renewal or transfer should have, were intended to, and likely did, result in vessels with consistent (equal) passenger limits specified on both the for-hire permit and the COI. In practice, however, it has been possible for the passenger limits on the two documents to be unequal and, as a result, allow a vessel to carry

more passengers when fishing than the limit specified on the for-hire permit. This could occur if, for example, a vessel renewed the for-hire permit, or received one through transfer, was re-inspected by the USCG, and received a COI with a higher maximum passenger limit than specified on the for-hire permit. If inspected at sea, the vessel would not violate passenger restrictions as long as the number of passengers was less than or equal to the safe limit specified on the COI even if carrying more passengers than specified on the for-hire permit. As a result, the vessel could carry more passengers while fishing than specified on the for-hire permit and benefit, financially, from the higher passenger load.

This would be a temporary advantage to the vessel, however, because the permit could not be renewed (or transferred) with a COI with a higher passenger limit than specified on the for-hire permit. Thus, in order to continue to carry more passengers than specified on the for-hire permit when fishing, a new COI would have to be obtained specifying the lower limit prior to permit renewal and, upon renewal, re-inspection would need to occur to “recover” the higher limit. Such behavior would not be expected to be common or frequent. Although the fee for inspection may not be onerous, \$300 for a vessel less than 65 feet in length, relative to the potential increase in revenue associated with carrying more passengers, justifying to the USCG the need for doubling of the number of inspections as a strategic move may be difficult. Additionally, the ability to carry more passengers under a situation like this has likely been a regulatory loophole that few, if any, vessel owners are expected to have identified in the past, or would recognize in the future, and taken advantage of, even temporarily. As a result, although this proposed action would prevent behavior previously allowed, little to no change in economic benefits would be expected because the behavior that would be prohibited is not believed to have occurred in the past or be expected to occur in the future in the absence of this proposed action.

Other than as discussed in the previous paragraph, this assessment assumes that this proposed action should, for most vessels, not be expected to affect the operation, and associated revenue, of any affected vessel when fishing. Most vessels with a for-hire permit are expected to have both a reef fish and a CMP permit. Vessels with a reef fish for-hire permit are required to follow federal regulations when fishing in state waters if the federal regulations are more restrictive than the state regulations. As a result, any passenger capacity restrictions accruing to the reef fish for-hire permit would apply when fishing in EEZ and state waters. Thus, any expanded revenue opportunities accruing to this proposed action would be expected to be associated with expansion of non-fishing operations. This may not be the case, however, for vessels that only have a CMP for-hire permit. These vessels, however, would be expected to be in the minority.

Few vessels have encountered a problem associated with Gulf for-hire permit renewal or transfer due to passenger capacity issues in recent years, with only an estimated seven denials (renewal or transfer) occurring from 2011 through the time of this analysis. Thus, only a small portion of the for-hire fleet has been directly affected by the current regulations associated with passenger capacity and permit renewal or transfer. However, with declining seasons for some key species, notably red snapper, the decline in the general economy, and the slow pace of the economic recovery, service diversification may help vessels remain in business. Further, as long as fishing effort is sufficiently limited, as would be expected by the moratoria and limiting passenger

capacity to that specified on the for-hire permit, and the stocks are adequately protected, limiting financial opportunities from other modes of operation would not be reasonable or equitable.

Thus, the proposed action would be expected to result in an increase in revenue to affected for-hire vessels. Available data does not support quantifying this increase. However, because few vessels have encountered the problem which this proposed action would address, the total increase in revenue would be expected to be small.

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 that can be expressed as costs associated with the regulations. Costs associated with this specific action include:

Council costs of document preparation, meetings, public hearings, and information dissemination.....	\$0
NMFS administrative costs of document preparation, meetings, and review	\$10,000
TOTAL.....	\$10,000

The development of this proposed action has been wholly undertaken by NMFS. Council involvement in the development of this action was limited to routine discussion of the purpose and need at one Council meeting and subsequent request that NMFS take action. As a result, Council costs have been minimal. The Federal costs of document preparation are based on staff time, travel, printing, and any other relevant items where funds were expended directly for this specific action. No change in enforcement costs are anticipated.

1.6 Determination of Significant Regulatory Action

Pursuant to E.O. 12866, a regulation is considered a “significant regulatory action” if it is likely to result in: (1) An annual effect of \$100 million or more or adversely affect 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) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive order. Based on the information provided above, this proposed action has been determined to not be economically significant for the purposes of E.O. 12866.

CHAPTER 2. REGULATORY FLEXIBILITY ACT ANALYSIS

2.1 Introduction

The purpose of the Regulatory Act Analysis (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 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 fishery management plan (FMP) or amendment (including framework management measures and other regulatory actions) and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

The RFA requires agencies to conduct a Regulatory Flexibility Act Analysis (RFAA) for each proposed rule. The RFAA 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 RFAA is conducted to primarily determine whether the proposed action would have a “significant economic impact on a substantial number of small entities.” The RFAA 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 proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) 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; 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule; 6) a description and estimate of the expected economic impacts on small entities; and 7) an explanation of the criteria used to evaluate whether the rule would impose “significant economic impacts”.

2.2 Statement of the need for, objective of, and legal basis for the proposed action

The need for and objective of this proposed action are provided in Chapter 1. In summary, the need for this proposed action is to eliminate a restriction that unnecessarily restricts the ability of for-hire businesses to diversify their services and maximize their profits while maintaining for-hire effort controls in the Gulf of Mexico (Gulf) reef fish and coastal migratory pelagic (CMP) fisheries. This proposed action would eliminate the requirement to submit a U.S. Coast Guard (USCG) Certificate of Inspection (COI) in the renewal or transfer of Gulf federal

charter/headboat permits (hereafter referred to as a for-hire permit) and prohibit the harvest of possession of Gulf reef fish or CMP species on for-hire vessels carrying more passengers than the limit listed on the for-hire permit. The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for this proposed action.

2.3 Description and estimate of the number of small entities to which the proposed action would apply

This proposed action would be expected to directly affect all for-hire vessels with a Gulf federal for-hire permit. A federal for-hire permit is required for for-hire vessels to harvest reef fish or CMP species in the Gulf Exclusive Economic Zone (EEZ). On March 1, 2013, 1,348 vessels had a valid (non-expired) or renewable reef fish for-hire permit and 1,377 vessels had a valid or renewable CMP for-hire permit. An expired permit is renewable for one year after expiration. Many for-hire vessels have both the reef fish and CMP charter for-hire permits and 1,440 unique vessels had one (either a reef fish or CMP permit) or both for-hire permits. The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Among the 1,440 vessels with at least one for-hire permit, 80 are believed to primarily operate as headboats and 1,360 primarily operate as charter vessels.

This proposed action would also affect for-hire vessels that do not have a federal for-hire permit that attempt to purchase and transfer a federal for-hire permit from a permitted vessel. The number of for-hire vessels that do not have a federal for-hire permit and may wish to acquire one is unknown.

The average charter vessel is estimated to earn approximately \$81,700 (2012 dollars) and the average headboat is estimated to earn approximately \$247,000. These estimates apply to vessels with and without a federal for-hire permit.

The National Marine Fisheries Service has not identified any other small entities that would be expected to be directly affected by this proposed action.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.0 million (NAICS code 713990, recreational industries) for all its affiliated operations worldwide. All for-hire vessels expected to be directly affected by this proposed rule are believed to be small business entities.

2.4 Description of the projected reporting, record-keeping and other compliance requirements of the proposed action, 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

This proposed action would not establish any new reporting, record-keeping, or other compliance requirements except as discussed below with respect to passenger capacity fishing restrictions.

2.5 Identification of all relevant federal rules, which may duplicate, overlap or conflict with the proposed action

No duplicative, overlapping, or conflicting federal rules have been identified.

2.6 Significance of economic impacts on a substantial number of small entities

Substantial number criterion

This proposed action would be expected to directly affect an estimated 1,440 vessels that possess a valid or renewable Gulf reef fish or CMP for-hire permit and an unknown number of for-hire vessels that do not have a federal for-hire permit. The number of federally permitted for-hire vessels that would be expected to be directly affected represents the entire fleet. As a result, this proposed action is determined to meet the substantial number criterion.

Significant economic impacts

The outcome of “significant economic impact” can be ascertained by examining two factors: disproportionality and profitability.

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

All entities expected to be directly affected by the measures in this proposed action are determined for the purpose of this analysis to be small business entities, so the issue of disproportionality does not arise in the present case.

Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

A more detailed discussion of the expected economic effects of all the actions and alternatives in this proposed amendment is provided in Chapter 1.

The proposed elimination of the requirement to submit a current USCG COI with the application to renew or transfer a federal Gulf for-hire permits would be expected to allow permit transfers and renewals to occur in a more timely and efficient manner, result in less disruption in vessel operation, and result in increased revenue to affected entities. Vessels with a higher passenger capacity on their COI than on their for-hire permit, in the case of permit renewals, or on the for-hire permit they are attempting to acquire through transfer, would not be required to obtain a new COI with an adjusted (lower) passenger capacity. As a result, these vessels would not have to incur the costs associated with re-inspection or reduced revenue associated with the operational delay re-inspection may precipitate. Vessels that provide non-fishing for-hire services could carry more passengers, subject to the passenger capacity specified by their COI, than when fishing and not be limited to the lower passenger specified by their for-hire permit. As a result, revenue from these services (non-fishing for-hire) could be increased. Available data, however, does not support quantifying these potential increases.

The proposed prohibition on the harvest or possession of reef fish and CMP species on vessels with a Gulf for-hire permit that is carrying more passengers than is specified on the for-hire permit would be expected to result in little to no reduction in revenue to any for-hire businesses. Under current regulations, the legal passenger capacity is determined by the limit specified by the COI and not the for-hire permit. Although it is possible for a for-hire vessel to have a COI listing a passenger capacity limit that is higher than the limit listed on the for-hire permit, if the COI is obtained after the for-hire permit is renewed, or obtained by transfer, this would be expected to be the case for few, if any, vessels. Additionally, the passenger limits specified on the two documents could only continue to be unequal for a limited amount of time because they would have to be equal at the next renewal cycle (or if transferred). As a result, few, if any, vessels would be expected to currently be able to carry more passengers when fishing than listed on their for-hire permit and, for any vessels can carry more passengers when fishing because of having a higher passenger capacity specified on their COI, the economic benefits associated with this would be temporary.

The proposed prohibition on the harvest or possession of reef fish and CMP species on vessels with a Gulf for-hire permit that is carrying more passengers than is specified on the for-hire permit would be expected to reduce revenue for vessels that may previously have carried more passengers than specified on their for-hire permit, though few vessels are expected to have engaged in this practice. Current regulation, although intended to limit effort per vessel to the number of passengers on the original moratorium permit, only places passenger restrictions on the renewal or transfer of for-hire permits; no passenger restrictions are placed on the vessel when engaged in fishing. In theory, the restrictions placed on permit renewal or transfer should have, were intended to, and likely did, result in vessels with consistent (equal) passenger limits specified on both the for-hire permit and the COI. In practice, however, it has been possible for the passenger limits on the two documents to be unequal and, as a result, allow a vessel to carry more passengers when fishing than the limit specified on the for-hire permit. This could occur if, for example, a vessel renewed the for-hire permit, or received one through transfer, was re-inspected by the USCG, and received a COI with a higher maximum passenger limit than specified on the for-hire permit. If inspected at sea, the vessel would not violate passenger

restrictions as long as the number of passengers was less than or equal to the safe limit specified on the COI even if carrying more passengers than specified on the for-hire permit. As a result, the vessel could carry more passengers while fishing than specified on the for-hire permit and benefit, financially, from the higher passenger load.

This would be only a temporary advantage to the vessel, however, because the permit could not be renewed (or transferred) with a COI with a higher passenger limit than specified on the for-hire permit. Thus, in order to continue to carry more passengers than specified on the for-hire permit when fishing, a new COI would have to be obtained specifying the lower limit prior to permit renewal and, upon renewal, re-inspection would need to occur to “recover” the higher limit. Such behavior would not be expected to be common or frequent. Although the fee for inspection may not be onerous, \$300 for a vessel less than 65 feet in length, relative to the potential increase in revenue associated with carrying more passengers, justifying to the USCG the need for doubling of the number of inspections as a strategic move may be difficult. Additionally, the ability to carry more passengers under a situation like this has likely been a regulatory loophole that few, if any, vessel owners are expected to have identified in the past, or would recognize in the future, and taken advantage of even temporarily. As a result, although the proposed prohibition would prevent behavior previously allowed, little to no change in economic benefits would be expected because the behavior that would be prohibited is not believed to have occurred in the past or be expected to occur in the future in the absence of this proposed prohibition.

Few vessels have encountered a problem associated with Gulf for-hire permit renewal or transfer due to passenger capacity issues in recent years, with only an estimated seven denials (renewal or transfer) occurring from 2011 through the time of this analysis. Thus, only a small portion of the for-hire fleet has been directly affected by current regulations. However, with declining seasons for some key species, notably red snapper, the decline in the general economy, and slow pace of economic recovery, service diversification may become increasingly important to help for-hire businesses remain economically viable. Thus, for some individual small businesses, the economic effects of this proposed action could be significant. However, overall, because few vessels have encountered a problem with conflicting passenger capacities at either the permit renewal or transfer stage, only a small portion of the for-hire fleet would be expected to be directly affected by this proposed action. As a result, this proposed action would not be expected to significantly affect the revenue or profit of a substantial number of small entities.

2.7 Description of the significant alternatives to the proposed action and discussion of how the alternatives attempt to minimize economic impacts on small entities

This proposed action, if adopted, would not be expected to have a significant adverse economic effect on a substantial number of small entities. The expected effects of this proposed action would be an increase in revenue and profit to a small portion of the for-hire fleet. As a result, the issue of significant alternatives is not relevant.

CHAPTER 3. SOCIAL IMPACT ASSESSMENT

3.1 Social Environment

Descriptions of the social environment associated with the Gulf of Mexico (Gulf) reef fish and coastal migratory pelagic (CMP) fisheries are contained in GMFMC (2011; general reef fish), GMFMC (2012; grouper), GMFMC (2013; red snapper), GMFMC/SAFMC (2011; CMP) and GMFMC/SAFMC (2013; CMP) and are incorporated herein by reference.

3.2 Direct and Indirect Impacts on the Social Environment

The impacts on the social environment of the proposed action would be expected to mirror the economic impacts described in Section 1.4. In summary, eliminating consideration of the passenger capacity specified on the U.S. Coast Guard Certificate of Inspection (COI) during the transfer or renewal of Gulf charter/headboat permits (hereafter referred to as for-hire permits) would be expected to allow an increase in the economic viability of for-hire vessels by reducing permit renewal and transfer problems associated with passenger capacity and allowing them to diversify their services and operate more efficiently. Increasing the economic viability of for-hire vessels and supporting the diversification of for-hire services would be expected to support increased social benefits to the individuals engaged in these businesses, their families, the businesses they interact with, and the communities where these individuals and businesses are located. Economically healthy businesses that offer diversified services, and the communities where they reside, support more robust opportunities and social support systems, and are less vulnerable to stresses that arise from natural or man-made disruptions, such as extreme weather events, oil spills, or economic contractions.

Similar to the discussion in Section 1.4, few, if any, social impacts would be expected to accrue to the proposed prohibition on harvest or possession of reef fish or CMP species on for-hire vessels carrying more passengers than specified on their for-hire permit. Few vessels have likely had, or would be expected to have, a COI listing a higher passenger capacity than on their for-hire permit. For vessels on which this has occurred, or would occur in the absence of this proposed action, it is unlikely that the vessel operators recognized that, when fishing, the vessel could have carried the maximum number of passengers specified by the COI and not been limited to the lower capacity specified by the for-hire permit. Even for those situations where this was recognized, the situation was of limited duration because subsequent permit renewal (or transfer) required that the passenger capacity on the COI equal that listed on the for-hire permit. As a result, because few, if any, vessels have, or would be expected to, benefited from this circumstance, the proposed prohibition would be expected to result in little, if any, social impacts.

Although few vessels have encountered problems in recent years associated with Gulf for-hire permit renewal or transfer due to passenger capacity issues and the proposed action would be expected to support only minor total improvement in economic and social benefits, even a minor

improvement in increasing the economic viability of affected businesses could contribute to strengthening the resiliency of these businesses and associated communities.

Thus, the proposed action would be expected to result in an increase in the social benefits accruing to the individuals who own and work for Gulf for-hire businesses and the communities where these individuals and businesses reside.

3.3 Environmental Justice

Executive Order 12898 requires federal agencies conduct their programs, policies, and activities in a manner to ensure individuals or populations are not excluded from participation in, or denied the benefits of, or subjected to discrimination because of their race, color, or national origin. In addition, and specifically with respect to subsistence consumption of fish and wildlife, federal agencies are required to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. This executive order is generally referred to as environmental justice (EJ).

Communities in the Gulf where EJ issues may arise are identified in GMFMC (2011), GMFMC (2012), GMFMC (2013), and GMFMC/SAFMC (2011) and are incorporated herein by reference. However, although some EJ populations in Gulf communities may be affected by this proposed action, no EJ issues have been identified or would be expected to arise. As discussed in Sections 1.4, 2.6, and 3.2, this action, if implemented, would be expected to increase economic and social benefits to affected entities and associated communities. All the effects of this proposed action would be expected to be positive and all affected entities, which would include current and prospective for-hire permit holders, would be expected to have equal opportunity to receive the expected benefits. Therefore, no EJ individuals or populations would be expected to experience disproportionately high and adverse human health or environmental effects as a result of this proposed action.

CHAPTER 4. REFERENCES

GMFMC. 2003. Corrected Amendment for a Charter Vessel/Headboat Permit Moratorium Amending the FMPs for: Reef Fish (Amendment 20) and Coastal Migratory Pelagics (Amendment 14). Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. Available at:
http://www.gulfcouncil.org/fishery_management_plans/reef_fish_management_archives.php.

GMFMC. 2005. Final Amendment to the FMPs for: Reef Fish (Amendment 25) and Coastal Migratory Pelagics (Amendment 17). Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. Available at:
http://www.gulfcouncil.org/fishery_management_plans/reef_fish_management_archives.php.

GMFMC. 2011. Final Generic Annual Catch Limits/Accountability Measures Amendment for the Gulf of Mexico Fishery Management Council's Red Drum, Reef Fish, Shrimp, Coral and

Coral Reefs Fishery Management Plans. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. Available at: http://www.gulfcouncil.org/fishery_management_plans/generic_management_amendments.php.

GMFMC. 2012. Framework Action to Set the 2013 Gag Recreational Fishing Season & Bag Limit & Modify the February-March Shallow-Water Grouper Closed Season. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. Available at: http://www.gulfcouncil.org/fishery_management_plans/reef_fish_management.php.

GMFMC. 2013. Framework Action to Set the 2013 Red Snapper Commercial and Recreational Quotas and Modify the Recreational Bag Limit. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. Available at: http://www.gulfcouncil.org/fishery_management_plans/index.php.

GMFMC/SAFMC. 2011. Final Amendment 18 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. Available at: http://www.gulfcouncil.org/fishery_management_plans/migratory_pelagics_management.php.

GMFMC/SAFMC. 2013. Draft Amendment 19 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. Available at: http://www.gulfcouncil.org/fishery_management_plans/scoping-thru-implementation.php.

Savolainen, M. A., R. H. Caffey, and R. F. Kazmierczak, Jr. 2012. Economic and Attitudinal Perspectives of the Recreational For-hire Fishing Industry in the U.S. Gulf of Mexico. Center for Natural Resource Economics and Policy, LSU AgCenter and Louisiana Sea Grant College Program, Department of Agricultural Economics and Agribusiness, Louisiana State University, Baton Rouge, LA. 171 p. Available at: <http://www.laseagrant.org/pdfs/Gulf-RFH-Survey-Final-Report-2012.pdf>

APPENDIX A

Issues and Options Related to Passenger Capacity in the Limited Entry Gulf of Mexico For-Hire Fishery

Background

Fishery Management Plan Amendments establishing the charter vessel/headboat permit moratorium for the coastal migratory pelagics fishery (Amendment 14) and reef fish fishery (Amendment 20) were implemented in June 2003. The intended effect of these amendments was to cap the effort and passenger capacity of for-hire vessels operating in these two fisheries at the level documented in March 2001 while the Council evaluated whether limited access programs were needed to permanently constrain effort. Those amendments stated that the passenger capacity of permitted vessels would be restricted to that established by the U.S. Coast Guard safety certificate.

In June 2006, the Council extended these moratoria indefinitely into the future through Amendments 17 and 25 to the Coastal Migratory Pelagics and Reef Fish Fishery Management Plans, respectively. Implementing regulations at 622.4 state 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."

Issue

When first issuing Gulf of Mexico charter/headboat permits under the moratorium, NOAA Fisheries defined the maximum passenger capacity of each permit as the maximum number of passengers that the qualifying vessel could carry based on the vessel COI in the qualifying year. That number is printed on the face of each permit. If a vessel's COI had multiple passenger capacities, then we based the maximum passenger capacity for the permit on the passenger capacity that applied to *federal waters*. However, in practice, per NOAA General Counsel guidance, we prohibit the transfer or renewal of any Gulf of Mexico charter/headboat permit to a vessel with a passenger capacity listed on the COI for *any waters* that exceeds the passenger capacity of the vessel to which it was first issued.

Numerous charter/headboat permit holders have been negatively impacted by this practice over the years because, to transfer or renew their permit, they are required to reduce all passenger capacities on the vessel's COI to match the passenger capacity on their permit, regardless of the geographic area or activity to which the passenger capacity restriction applies. As a result, a permit holder cannot use their vessel to carry additional passengers for alternate purposes, such as eco-cruises, sight-seeing trips, and dinner cruises, to supplement their income.

While the fishery management plan amendments identified the COI as the way to measure the passenger capacity of for-hire fishing vessels, the effect that approach would have on restricting non-fishing activities was not contemplated. NOAA General Counsel has requested the Gulf Council discuss how best to address this issue.

Options

Option 1: Ask the USCG to specify a separate and specific passenger capacity on the COI for vessels when operating under the provisions of a Gulf of Mexico charter/headboat permit.

The USCG Sector St. Petersburg vessel inspection division typically works with the owners of inspected vessels to allow them to operate up to their maximum passengers permitted under 46 CFR vessel regulations and has expressed willingness to work with each inspected small passenger vessel owner/operator that possesses a fishery permit and who requests such a statement be placed on their COI. NOAA Fisheries could work toward securing such agreement from the USCG in all relevant sectors. The drawback of this approach is that it would burden the USCG and vessel owners by establishing a new requirement/process.

Option 2 (Recommended): Revise the regulations to limit the maximum passenger capacity of the vessel, when operating as a charter, to the passenger capacity of the permit as specified on the face of the charter/headboat permit because that value represents the fishing effort allowed by the vessel that qualified for the permit in March of 2001, and not restrict the transfer or renewal of the permit based on the passenger capacity on the COI.