



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210211-0019]

RIN 0648-BJ60

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region and Reef Fish Resources of the Gulf of Mexico; Possession Limits for Federally-Permitted Charter Vessels and Headboats

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures as described in an abbreviated framework action to the Fishery Management Plans (FMPs) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and the Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). This final rule modifies the on-board multi-day recreational possession limit regulations for Federal charter vessel and headboat (for-hire) trips in the Gulf of Mexico (Gulf). This final rule also makes an administrative change to the reporting requirement for Gulf's individual

fishing quota (IFQ) program during catastrophic conditions. The purposes of this final rule are to promote efficiency in the utilization of the reef fish and CMP resources and reduce regulatory discards, and to update the IFQ reporting requirements.

DATES: This final rule is effective [*insert date 30 days after date of publication in the **FEDERAL REGISTER***].

ADDRESSES: Electronic copies of the framework action that contain an environmental assessment and a regulatory flexibility analysis (RFA) may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-amendment-modify-multi-day-trip-possession-limits-federal-permitted-charter>.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Gulf Council manage reef fish resources in the Gulf exclusive economic zone (EEZ) under the Reef Fish FMP. NMFS, and both the Gulf Council and South Atlantic Fishery Management Council (Councils) manage the CMP fishery under the CMP FMP. The Gulf Council prepared the Reef Fish FMP and the Councils jointly prepared the CMP FMP. NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority

of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*).

On July 28, 2020, NMFS published a proposed rule for the framework action and requested public comment (85 FR 45363). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented by this final rule is described below.

Background

In Gulf Federal waters, each person aboard a vessel with a Federal Gulf charter vessel/headboat permit for reef fish or CMP species (for-hire permit) that is on a for-hire trip greater than 24 hours in duration is allowed to possess two daily recreational bag limits for species in the Reef Fish FMP and CMP FMP, except for speckled hind, warsaw grouper, and Gulf migratory group cobia (50 CFR 622.38(c) and 50 CFR 622.382(a)(2)). Speckled hind and warsaw grouper have daily recreational bag limits of one fish per vessel per day; therefore, the possession limit is two vessel limits, or two fish per vessel on a trip that exceeds 24 hours (50 CFR 622.38(c)). Gulf migratory group cobia is a limited harvest species under 50 CFR 622.383(b), which specifies that no person may possess more than two cobia per person per day regardless of the duration of a trip, and this final rule does not revise that provision. A

trip begins with departure from a dock, berth, beach, seawall, or ramp and terminates with return to a dock, berth, beach, seawall, or ramp (50 CFR 622.2).

Currently, for the reef fish or CMP possession limit to apply, the for-hire vessel must have two licensed captains on board, and every passenger must have a receipt for the fishing trip which verifies the length of the trip (50 CFR 622.38(c) and 50 CFR 622.382(a)(2)). In addition, the possession limit does not apply until after the first 24 hours of the trip (50 CFR 622.11). Therefore, during the first 24 hours of a trip, each person (or vessel in the case of speckled hind and warsaw grouper) may only possess one daily recreational bag limit. The allowance for the possession of two daily bag or vessel limits for reef fish and CMP species does not begin until the second 24-hour period on a multi-day trip begins.

The Gulf Council heard public testimony at its June 2019 meeting that some for-hire vessel captains may have misinterpreted the current regulations as allowing the possession of two daily recreational bag limits at any time during a trip that lasts more than 24 hours. Additional testimony showed that allowing recreational for-hire fishers the ability to retain the possession limit at any time during a multi-day trip could increase the efficiency of the trip and reduce regulatory discards. For example, some vessel operators would prefer to target one species at

a time in locations in which that species is abundant, fishing until the possession limit for the planned multi-day trip has been retained. After fishers harvest the possession limit, the vessel's operator would attempt to avoid that species for the remainder of the multi-day trip. However, because the current possession limit does not apply until after the first 24 hours of the trip, vessel operators cannot plan a trip in this manner, but must resume fishing for the target species after the first 24-hours if they want to allow fishers to obtain the second daily bag limit.

Management Measure Contained in this Final Rule

This final rule modifies the requirements to retain the possession limit on-board vessels that have been issued valid Gulf reef fish or CMP for-hire permits. This final rule increases the trip duration threshold to greater than 30 hours, but allows fishers to retain a second daily bag limit at any time during a trip of at least that duration. The Council determined that since fishers would be allowed to possess the second daily bag limit at any time during the trip, the trip duration should clearly exceed 24 hours. All other requirements to retain the recreational possession limit are unchanged through this final rule. The for-hire vessel must have two licensed operators aboard, and each passenger must have in their possession a receipt issued to them on behalf of the vessel that verifies the

length of the trip. This final rule requires that the receipt specify the date and time of departure, and clarifies that the entire trip must occur on days when the harvest and possession of the applicable reef fish species are allowed.

Measure Contained in this Final Rule not in the Framework Action

In addition to the measure described in the framework action, this final rule revises language related to reporting under the Gulf Council's individual fishing quota (IFQ) programs during catastrophic conditions. The Gulf currently has two IFQ programs, one for commercial harvest of red snapper and one for commercial harvest of groupers and tilefishes. These programs require participants to record information electronically. However, both programs include a provision that allows for the use of some paper-based forms if catastrophic conditions occur (50 CFR 622.21(a)(3)(iii) and 622.22(a)(3)(iii)). This provision states that if the Regional Administrator (RA) determines that catastrophic conditions exist, NMFS will provide each IFQ dealer in the affected areas the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA.

NMFS initially required the use of sequentially numbered paper forms as a method intended to prevent fraud. Although NMFS has provided dealers with these forms, to

date, these forms have not been used after the RA has determined catastrophic conditions exist, and NMFS has determined that maintaining them in this manner is not practical or cost effective. Therefore, NMFS is removing the references to sequentially coded paper forms in both 50 CFR 622.21(a)(3)(iii) and 622.22(a)(3)(iii). If an IFQ dealer requests paper forms for use during catastrophic conditions, NMFS will provide unnumbered forms.

Comments and Responses

NMFS received 14 comments on the proposed rule. The majority of comments (eight) were in favor of the framework action and the proposed rule. Some comments in support of the proposed rule stated that the changes to the possession limit requirements will help resolve any confusion about when during the trip the possession limit may be retained, will allow for better operating efficiency for for-hire vessels, and will not negatively impact fish populations. NMFS agrees with these comments. Additionally, NMFS received one comment regarding the change to IFQ reporting requirements during catastrophic conditions that was in favor of that change.

Comments that were outside the scope of the framework action and the proposed rule and are not addressed in this final rule. Comments in opposition to the proposed rule are summarized below, followed by NMFS' respective responses.

Comment 1: Allowing fishers on for-hire vessels to

retain the possession limit before the first 24 hours of the trip are complete will make it easier for vessel operators to circumvent the regulations, and more difficult to enforce the regulations. This change will also place an extra burden on law enforcement officers by requiring them to determine the actual versus the reported details of a for-hire trip.

Response: NMFS disagrees that the changes to the possession limit requirements implemented in this final rule will make the regulations more difficult to enforce or place extra burdens on law enforcement officers. Like the current regulations, the revised regulations will allow passengers on for-hire vessels to retain two daily bag limits on trips greater than a specified duration. The revised regulations will increase the duration of trip from greater than 24 hours to greater than 30 hours, and allow retention of the second daily bag limit at any time during that trip instead of requiring that passengers wait until the first 24 hours of the trip has passed. All of the other current requirements, which are in place to help enforce the provision, remain the same. These include that two licensed operators must be aboard, and that each passenger must have in their possession a receipt issued to them on behalf of the vessel that verifies the date and time of departure and length of the trip. Therefore, NMFS does not expect any significant changes in the responsibilities of

law enforcement as result of the implementation of this final rule. Law enforcement will continue to operate in the same manner as before this final rule, using intercepts and reviews of the captain and vessel information, vessel harvest, and trip duration validation.

Comment 2: The changes to the possession limit regulations rely heavily on the full implementation of the Gulf of Mexico Electronic For-Hire Reporting final rule, which includes a requirement that Gulf reef fish and CMP for-hire vessels use vessel monitoring systems (VMS). NMFS has not fully implemented that final rule and this change to the possession limit regulations is a way for the Gulf Council and NMFS to increase acceptance of VMS.

Response: The changes to the possession limit regulations implemented through this final rule were developed independently from the Gulf of Mexico For-Hire Electronic Reporting final rule, and the Gulf Council's decision to make changes to the for-hire vessel possession limit was not contingent on the implementation of the VMS requirement.

Comment 3: Some trips that are planned for greater than 30 hours may need to end early because of weather, medical, or mechanical issues, which may create a problem if two daily bag limits have already been taken.

Response: NMFS understands that situations may occur where a trip that is expected to exceed 30 hours needs to

end prematurely. If that occurs, fishers might already be in possession of two daily bag limits even though the vessel has not been on the trip for more than 30 hours, which would result in a violation of the regulations if the vessel must return to the dock before 30 hours elapses. However, NMFS does not expect this type of situation to occur routinely, and NMFS agrees with the public comments and discussion at Gulf Council meetings, which indicated that vessel captains have options to address this concern, such as demonstrating proper foresight prior to getting underway and anchoring offshore rather than pulling into the dock. Further, consistent with the NOAA Office of General Counsel Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions, enforcement officers must assess each situation and, depending on the nature and seriousness of the violation, respond accordingly. This policy is available at the website <https://www.gc.noaa.gov/documents/Penalty-Policy-CLEAN-June242019.pdf>.

Classification

Pursuant to section 304(b) (3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Reef Fish and CMP FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purposes of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble. The objectives of this final rule are to promote efficiency in the utilization of the reef fish and CMP resources, decrease regulatory discards, and establish reporting requirements in the IFQ programs that would be more practical and cost effective for NMFS during catastrophic conditions.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy on the certification in the proposed rule. NMFS received six public comments on the economic analysis of the proposed rule. All six comments supported the conclusion that the proposed rule would have

positive economic effects on for-hire fishing vessels. No changes to this final rule were made in response to public comments. The factual basis for the certification was published in the proposed rule and is not repeated here. Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Charter vessels, Coastal migratory pelagics, Fisheries, Fishing, Gulf of Mexico, Headboats, Recreational bag and possession limits.

Dated: February 12, 2021.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service*

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

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, 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 § 622.21, revise paragraph (a)(3)(iii) to read as follows:

§ 622.21 Individual fishing quota (IFQ) program for Gulf red snapper.

(a) * * *

(3) * * *

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based

system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

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3. In § 622.22, revise paragraph (a)(3)(iii) to read as follows:

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) * * *

(3) * * *

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms and instructions for submission of the forms to the RA. The paper forms will

also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

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4. In § 622.38, revise paragraph (c) to read as follows:

§ 622.38 Bag and possession limits.

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(c) *Possession limits for vessels with a valid Federal charter vessel/headboat permit for reef fish.* A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 30 hours may possess, at any time during the trip, no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the date and time of departure and length of the trip, and the entire trip occurs on days when the harvest

and possession of the applicable reef fish species are allowed.

5. In § 622.382, revise paragraph (a)(2) to read as follows:

§ 622.382 Bag and possession limits.

* * * * *

(a) * * *

(2) *Possession limits*—(i) *Possession limits for vessels with a valid Federal charter vessel/headboat permit for Atlantic coastal migratory pelagic fish.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(ii) *Possession limits for vessels with a valid Federal charter vessel/headboat permit for Gulf coastal migratory pelagic fish.* A person who is on a trip that spans more than 30 hours may possess, at any time during the trip, no more than two daily bag limits of Gulf king and Spanish mackerel, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, each passenger is issued and has in possession a receipt issued on behalf of

the vessel that verifies the date and time of departure and length of the trip, and the entire trip occurs on days when the harvest and possession of the applicable coastal migratory pelagic species are allowed.

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