

Replacement of Historical Captain Permits with Standard Federal Charter/Headboat Permits



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

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FRAMEWORK ACTION: Replacement of Historical Captain Permits with Standard Federal Charter/Headboat Permits

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ABBREVIATIONS USED IN THIS DOCUMENT

| | |
|---------|---|
| CMP | Coastal migratory pelagic |
| Council | Gulf of Mexico Fishery Management Council |
| EEZ | Exclusive economic zone |
| FMP | Fishery management plan |
| Gulf | Gulf of Mexico |
| NMFS | National Marine Fisheries Service |
| SERO | Southeast Regional Office |
| USCG | United States Coast Guard |

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CHAPTER 1. INTRODUCTION

1.1 Purpose and Need

The purpose of this action is to replace reef fish and coastal migratory pelagic (CMP) Historical Captain endorsements¹ held by approximately 32 for-hire operators in the Gulf of Mexico (Gulf) with standard Gulf charter/headboat (for-hire) permits. The need is to reduce the regulatory and potential economic burden on Historical Captain permit holders.

1.2 Background

The Historical Captain Endorsement was established in June 2003 when Amendment 20 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico and Amendment 14 to the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Reef Fish Amendment 20/CMP Amendment 14) was implemented. Recreational fishing comprises a substantial proportion of landings for many species in the Gulf (Coleman et al., 2004), and passengers who fish from for-hire fishing vessels are an important component of the recreational sector. During the 1980s and 1990s, the number of for-hire vessels operating in the Gulf increased rapidly, creating concern about the viability of the industry and the sustainability of the fish stocks they were harvesting (GMFMC 2002).

The Gulf of Mexico Fishery Management Council (Council) was concerned about the rapid increase in the number of for-hire vessels and trips, and the increased proportion of the catch harvested by the for-hire fleet, particularly because of the requirement under the Magnuson Stevens Act to end overfishing and rebuild overfished stocks. A January 2001 Report to Congress on the Status of U.S. Fisheries stated that several important reef fish and CMP species were overfished and/or experiencing overfishing including red snapper, red grouper, gag, vermillion snapper, king mackerel, and greater amberjack.

For-Hire permit moratorium

The joint Reef Fish Amendment 20/CMP Amendment 14 (GMFMC 2003) was initially implemented in June 2003. This amendment established a 3-year moratorium on the issuance of new recreational for-hire permits in the Reef Fish and CMP fisheries in the Gulf exclusive economic zone (EEZ). The amendment determined eligibility for the moratorium permits and was implemented on July 29, 2002, with the moratorium originally scheduled to become effective on December 26, 2002. However, on December 17, 2002, the National Marine Fisheries Service (NMFS) published an emergency rule that deferred the date when “moratorium” for-hire permits were required from December 26, 2002, until June 16, 2003. This action was required because NMFS and the Council determined that the implementing

¹ Historical captain endorsements function as standalone permits. Therefore, the terms endorsement and permit are used interchangeably in this document.

regulations for the for-hire permit moratorium contained an error regarding eligibility criteria that needed to be resolved before the moratorium could take effect.

The purpose of the moratorium was to cap the number of permitted vessels at the then existing level (1,693 permits) while the Council monitored the impact of the moratorium and considered the need for a more comprehensive effort management system in the for-hire component of the recreational sector. The Council set a qualifying cutoff date of March 29, 2001, in order to include all current permitted vessels and vessels which had applied for a permit as of that date.

Reef Fish Amendment 20/CMP Amendment 14 (GMFMC 2003) established a fully transferable permit to eligible operators, hereafter referred to as a standard permit. To determine initial eligibility, the following requirements were established to receive a standard permit:

- Any person who held a valid permit on March 29, 2001, or held a valid permit during the preceding year, or had applied for such a permit received in the NMFS office by March 29, 2001, or
- Any person who could demonstrate to NMFS they had a for-hire vessel under construction prior to March 29, 2001, with a copy of the contract and/or receipts for expenditures of at least \$5,000.

Historical Captain Endorsement

Reef Fish Amendment 20/CMP Amendment 14 (GMFMC 2003) also established a permit for historical captains. Persons who met the eligibility requirements to qualify as a historical captain (listed below), and submitted evidence of eligibility within 90 days of the implementation of the final rule implementing the amendment, were issued a letter of eligibility, which could be used to obtain a historical captain permit, valid only on the vessel that was operated by the historical captain. The eligibility criteria for the historical captain endorsement included any U.S. Coast Guard (USCG) licensed captain, who:

- demonstrated to NMFS they were licensed by the USCG and operated, (as a captain), a for-hire permitted vessel prior to March 29, 2001, but did not have a for-hire permit issued in their name,
- qualified for the permit within 90 days of implementation of the final rule, and
- demonstrated at least 25% of their earned income came from recreational for-hire fishing in 1 of the last 4 years ending with March 29, 2001.

Captains who were issued a historical captain endorsement were able to continue participating in for-hire fishing. The historical captain endorsements were issued as standalone permits rather than as true endorsements (which would require issuance of both the standard permit and an endorsement to the permit) to reduce paperwork. However, unlike the standard for-hire permit, the historical captain endorsement cannot be transferred and requires the endorsement holder to be present on the vessel while it is operating as a for-hire vessel (Table 1.2.1).

Table 1.2.1. A comparison of characteristics of reef fish and CMP for-hire standard permits and the historical captain endorsements that were established in Reef Fish Amendment 20/CMP Amendment 14 (GMFMC 2003) and extended indefinitely in Reef Fish Amendment 25/CMP Amendment 17 (GMFMC 2005).

| | For-Hire Permit | Historical Captain Endorsement |
|---|------------------|--------------------------------|
| Transferrable | Yes | No |
| Resale value | Yes | No |
| Permitholder required to be aboard vessel on for-hire trips | No | Yes |
| Passenger capacity | Varies by permit | Varies by endorsement |

The permit moratorium established in Reef Fish Amendment 20/CMP Amendment 14 (GMFMC 2003) was set to expire on June 16, 2006. In 2005, the Council developed Reef Fish Amendment 25/CMP Amendment 17 (GMFMC 2005) that established a limited access program that extended the permit moratorium indefinitely. The moratorium had the intended effect of a gradual reduction in the number of for-hire vessels operating in the federal waters of the Gulf. Between 2009 and 2018 (as of September 4, 2018), the number of federal for-hire reef fish permits decreased from 1,417 to 1,275 or by 10.0% (Figure 1.2.1.).

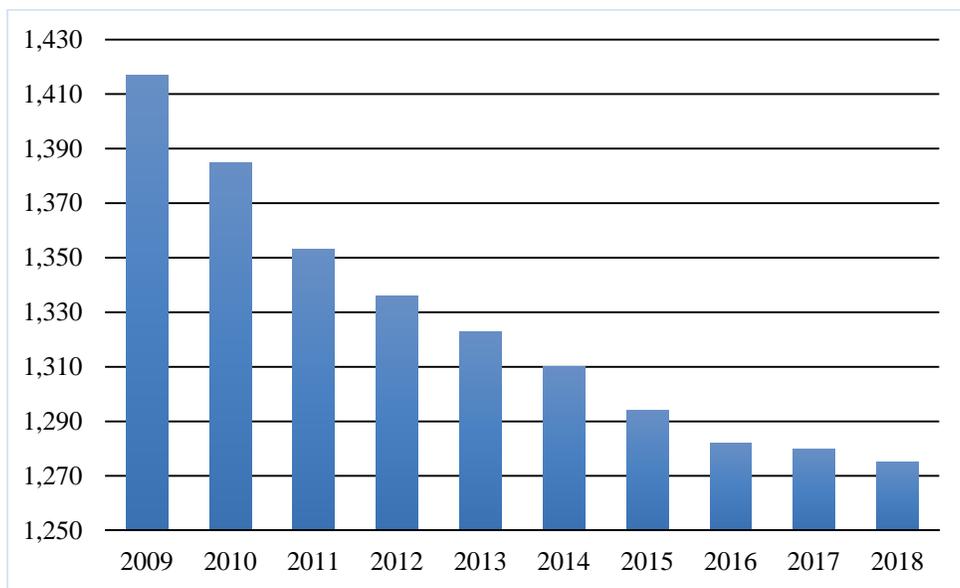


Figure 1.2.1. Number of federal for-hire reef fish permits in the Gulf from 2009 through 2018. Source: NMFS-SERO, 9/4/18.

From 2009 through 2018, the number of vessels with historical captain permits declined 43.9% from 57 vessels in 2008 to 32 in 2017 (Figure 1.2.2). Of these 32 vessels, all but one have both a reef fish and a CMP historical captain permit. The remaining vessel has a CMP historical captain permit only. The decline in the number of vessels with historical captain permits is much more pronounced than the decrease in vessels with standard permits and may reflect the limitations in transferability of historical captain permits. The distributions of vessels with a historical captain permit and of CMP and reef fish historical captain permits by state are provided in Table 1.2.2. Florida accounts for about 50% of the historical captain permits and associated vessels.

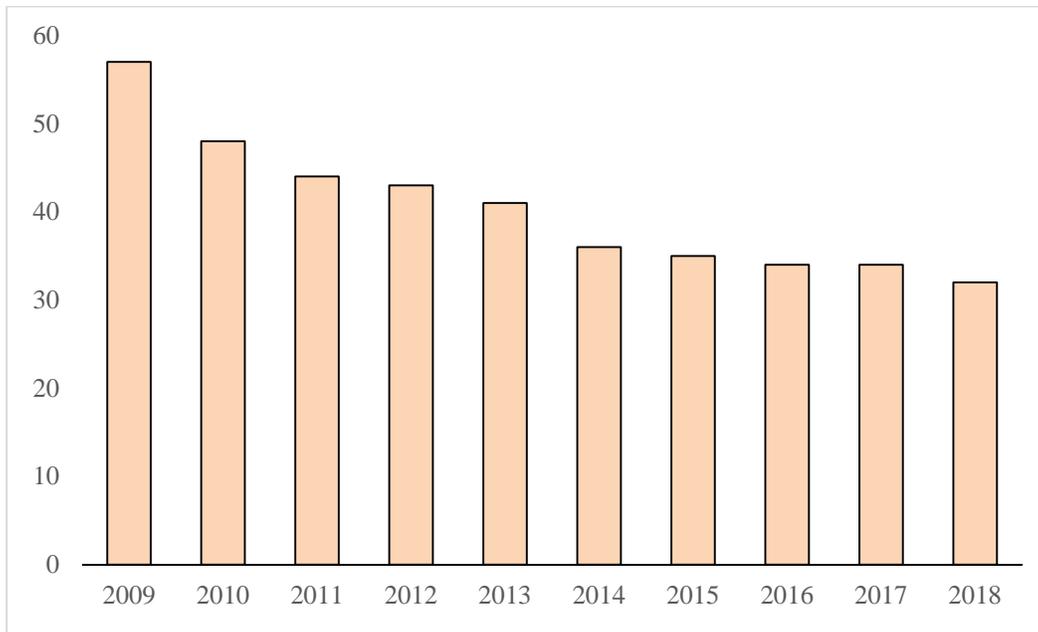


Figure 1.2.2. Number of federally permitted for-hire vessels with an historical captain permit in the Gulf from 2009 through 2018.
Source: NMFS-SERO, 9/4/18.

Table 1.2.2. Numbers of CMP and Reef Fish historical captain permits, and vessels by state.

| State | Historical Captain Permits | | Vessels |
|--------------|----------------------------|-----------|-----------|
| | CMP | Reef Fish | |
| Alabama | 3 | 3 | 3 |
| Florida | 17 | 16 | 17 |
| Louisiana | 6 | 6 | 6 |
| Mississippi | 2 | 2 | 2 |
| Texas | 4 | 4 | 4 |
| Total | 32 | 31 | 32 |

Source: NMFS-SERO, 9/4/18.

Passenger Capacity

The passenger capacity for each for-hire permit (including historical captain permits) was assigned based on vessel's allowable USCG passenger capacity at the time of issuance. This is referred to as the *permit capacity*. Since the time of issuance, permits may have been transferred to a vessel that differs in passenger capacity from that stated on the permits; this is referred to as the *vessel capacity*. Likewise, operators with historical captain permits may currently operate a vessel with a vessel capacity different from the permit capacity assigned when the endorsement was issued. The smaller of the permit capacity or the vessel capacity applies for the purpose of taking paying passengers fishing for reef fish or pelagic fish. For example, if a for-hire permit was assigned with a 25 passenger permit capacity and was later transferred to a vessel with a vessel capacity of 100, the permit may only be used to carry 25 passengers to fish for reef fish or pelagic fish. If that same permit was transferred to a vessel with a vessel capacity of 6 (which requires no certificate of inspection), the vessel may only be used to carry 6 passengers to fish for reef fish or pelagic fish while the permit is assigned to that vessel. The permit could be transferred to a larger vessel in the future, however, and the permit capacity at the time of issuance would still be effective.

Definitions

Permit capacity – the passenger capacity indicated on the permit that represents the maximum number of paying passengers that may be taken fishing.

Vessel capacity – the passenger capacity specified by the vessel's United States Coast Guard certificate of inspection (COI). If a vessel does not have a COI, it is limited to carrying no more than 6 paying passengers.

Figure 1.2.3 compares the permit capacities of historical captain permits between 2009 and 2018 with the vessel capacities of vessels with historical captain permits. During the 2009-2018 time interval, a faster decline in annual permit capacity (due to the decrease in the number of permits) has resulted in a narrower gap between the aggregate historical captain permit capacity and vessel capacity in the Gulf.

Because 31 out of 32 historical captains own both a CMP and reef fish permit, the following discussion focuses on CMP permits for ease of discussion. Table 1.2.3 provides a distribution of historical captain CMP permits by permit capacity. More than two-thirds of the permits have a permit capacity of 6. Cumulatively, 78.1% of the permits have a permit capacity of 29 or less. Only 3 of the permits have a permit capacity greater than 60.

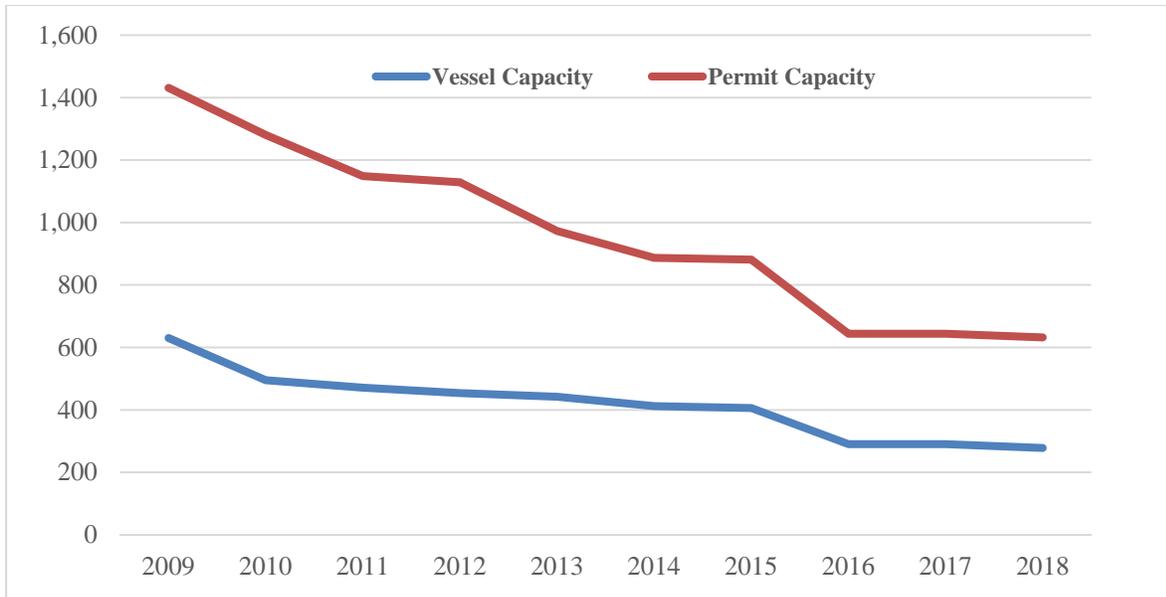


Figure 1.2.3. Aggregate permit capacity and vessel capacity for vessels with a historical captain permit (as of 09/04/18) in the Gulf from 2009 through 2018.
Source: NMFS-SERO, 9/4/18.

Table 1.2.3. Number and distribution of historical captain CMP permits by permit capacity.

| Permit Capacity | Permits | | Cumulative Frequency |
|-----------------|-----------|------------|----------------------|
| | Number | Percent | |
| 6 | 22 | 68.7 | 68.7 |
| 7-29 | 3 | 9.4 | 78.1 |
| 30-59 | 4 | 12.5 | 90.6 |
| 60+ | 3 | 9.4 | 100 |
| Total | 32 | 100 | |

Source: NMFS-SERO, 9/4/18.

The distribution of permits by vessel capacity provided in Table 1.2.4 indicates that 84.4% of the permits are tied to 6-pack vessels. Cumulatively, about 97% of the permits are tied to vessels with a vessel capacity of 29 passengers or less. A comparison between the historical captain permit capacity and the vessel capacity indicates that for 23 out of 32 permits (or about 72% of the permits), the permit capacity and the vessel capacity are equal.

Table 1.2.4. Number and distribution of historical captain CMP permits by vessel capacity.

| Permits | | | Cumulative Frequency |
|-----------------|-----------|------------|----------------------|
| Vessel Capacity | Number | Percent | |
| 6 | 27 | 84.4 | 84.4 |
| 7-29 | 4 | 12.5 | 96.9 |
| 30+ | 1 | 3.1 | 100 |
| Total | 32 | 100 | - |

Source: NMFS-SERO, 9/4/18.

Modifications to Historical Captain Endorsements

At the January 2018 Council meeting, several stakeholders expressed concerns relative to the limitation on the transferability of historical captain permits, and stated that the number of historical captain permits, which constitutes a small proportion of the for-hire fleet, has significantly declined. They also noted that limitations of the permit (e.g., inability to sell permit, must be present on vessel) can impede the continued operation of the historical captain's business and are no longer necessary to meet conservation and management objectives of the reef fish and CMP fisheries.

In response, the Council is considering action to convert historical captain endorsements to standard for-hire permits. This action would extend the same rights and responsibilities of existing reef fish and CMP for-hire permits to captains with a historical captain permit. This action would affect 32 historical captain CMP and 31 historical captain reef fish permits in the Gulf and allow them to become fully-transferable CMP or Reef Fish Charter/Headboat Permit, without the requirement for the permit holder to be on board. Because 31 captains possess both a historical captain CMP and a historical captain reef fish permit, this action would potentially affect 32 captains.

CHAPTER 2. REGULATORY IMPACT REVIEW

(TO BE COMPLETED)

CHAPTER 3. REGULATORY FLEXIBILITY ACT ANALYSIS

(TO BE COMPLETED)

CHAPTER 4. REFERENCES

Coleman, F., W.F. Figueira, J.S. Ueland, L.B. Crowder. 2004. The impact of United States recreational fisheries on marine fish populations. *Science* 305: 1958:1960.

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GMFMC. 2005. Final Amendment to the FMPs for Reef Fish (Amendment 25) and Coastal Migratory Pelagics (Amendment 17) for extending the charter vessel/headboat permit moratorium including supplemental environmental impact statement, regulatory impact review, and initial regulatory flexibility analysis, Gulf of Mexico Fishery Management Council. Tampa, Florida. <http://archive.gulfcouncil.org/Beta//GMFMCWeb/downloads/CHBAmend%2062305%20AS.pdf>

APPENDIX A: POTENTIAL PERMIT CAPACITY OPTIONS

During the August 2018 Council meeting, the Council requested the addition of options to consider various adjustments to the historical captain permits passenger capacity.

Option 1: Replace reef fish and CMP Historical Captain permits in the Gulf with standard Gulf charter/headboat (for-hire) permits. **Retain the permit capacity** associated with each historical captain permit.

Option 2: Replace reef fish and CMP Historical Captain permits in the Gulf with standard Gulf charter/headboat (for-hire) permits. The permit capacity of each new for-hire standard permit is limited to the corresponding historical captain permit capacity or the Gulf-wide average standard for-hire permit capacity (**approximately 14**), whichever is less.

Option 3 Replace reef fish and CMP Historical Captain permits in the Gulf with standard Gulf charter/headboat (for-hire) permits. The permit capacity associated with each new standard for-hire permit is limited to **the vessel capacity of the vessel currently operated** by the historical captain.

Option 4: Replace reef fish and CMP Historical Captain permits in the Gulf with standard Gulf charter/headboat (for-hire) permits. The permit capacity associated with each new standard for-hire permit is **limited to six passengers**.

Option 5: For historical captains who elect to replace their permits with a standard Gulf charter/headboat (for-hire) permit, the permit must be replaced with a standard for-hire permit and associated with a vessel within:

- A. two years from the implementation of this action
- B. three years from the implementation of this action

Option 6: Allow historical captains to **opt out of the replacement** of their historical captain permits with standard Gulf charter/headboat (for-hire) permits and retain their historical captain permits.

Discussion

Option 1 would replace reef fish and CMP Historical Captain permits in the Gulf with standard Gulf charter/headboat permits and maintain **the** historical captain's permit capacity as the capacity of the newly issued standard for-hire permit. **Option 1** would be the most straightforward way of converting historical captain permits into standard for-hire permits.

Option 1 would not be expected to adversely impact historical captains who may transfer their permits to vessels with passenger capacities equal to (or close to) their historical captain permits' respective permit capacities.

Option 2 would replace reef fish and CMP Historical Captain permits in the Gulf with standard Gulf charter/headboat permits. However, the permit capacity for each newly issued for-hire permit would be limited to the lesser value between the historical captain permit capacity and the Gulf- wide average for-hire permit passenger capacity (approximately 14). **Option 2** would not adversely impact the 23 vessels with historical captain CMP and reef fish permits with permit capacities less than 14. The nine remaining historical captains would be expected to be negatively impacted by **Option 2** because their permit capacity would be reduced to 14 passengers.

Option 3 would replace reef fish and CMP Historical Captain permits in the Gulf with standard Gulf charter/headboat permits but limit the permit capacity of the newly issued for-hire permits to the vessel capacity of the vessel currently operated by the historical captain. **Option 3** is expected to adversely impact historical captain permit holders with a permit capacity greater than the vessel capacity of the vessel they are currently operating. A comparison between the historical captain permit capacity and vessel capacity indicates that for about 72% of the historical captains (23 out of 32 captains), the permit capacity and the vessel capacity of permits are equal. Therefore, **Option 3** is expected to adversely affect the remaining nine historical captains.

Option 4 would replace reef fish and CMP Historical Captain permits in the Gulf with standard Gulf charter/headboat permits but limit the permit capacity of the newly issued standard for-hire permit to six passengers. **Option 4** would be the most restrictive among **Options 1-4** and would negatively affect those historical captains with historical captain permits with a permit capacity greater than six. Out of the 32 historical captains, 10 fall into this category.

Option 5 would give historical captains who elect to replace their permit with a standard Gulf for-hire permit up to 3 years from the implementation of this action to replace their historical captain permit and tie their newly issued standard permit to a vessel. **Option 5** would assist historical captains with permits that are currently on vessels that are also tied to permits held by a different person. In the Gulf, all permits associated with a given vessel (except historical captain permits) must be owned by the same entity. About 10 captains hold historical captain permits that are placed on vessels with permits belonging to other entities. The additional time would allow these captains to find vessels for their newly issued standard permits.

Option 6 would allow historical captains to opt out of the replacement of their historical captain permits with standard Gulf for-hire permits and retain their historical captain permits. Although this regulatory action attempts to reduce the regulatory and potential economic burden on historical captain permit holders, several options included in this action could adversely impact some historical captains. **Option 6** would allow historical captains to select the course of action that would best align with their interests.