

Framework Action to Eliminate Permit Decals for For-Hire Vessels in the Gulf of Mexico

Including Regulatory Impact Review and
Regulatory Flexibility Act Analysis



Abbreviated Framework Action to the Fishery Management Plans for Reef Fish and Coastal Migratory Pelagics in the Gulf of Mexico

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ABBREVIATED FRAMEWORK ACTION TO ELIMINATE PERMIT DECALS FOR FOR-HIRE VESSELS IN THE GULF OF MEXICO

Including Regulatory Impact Review and Regulatory Flexibility Act Analysis

Type of Action

Administrative Legislative
 Draft Final

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ABBREVIATIONS USED IN THIS DOCUMENT

CMP	Coastal Migratory Pelagics
Council	Gulf of Mexico Fishery Management Council
EEZ	exclusive economic zone
GMFMC	Gulf of Mexico Fishery Management Council
Gulf	Gulf of Mexico
IRFA	Initial Regulatory Flexibility Analysis
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
RA	Regional Administrator
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
SEFSC	Southeast Fisheries Science Center
SERO	Southeast Regional Office of NMFS
SRHS	Southeast Regional Headboat Survey

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CHAPTER 1. INTRODUCTION

1.1 Purpose and Need

The purpose of this proposed action is to consider eliminating the requirement to carry decals for vessels with federal charter vessel and headboat permits in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). The need for this proposed action is to alleviate unnecessary permit compliance burdens on fishermen, enforcement burdens on law enforcement officers, and administrative burdens and costs on the permit issuing agency.

1.2 Background

Gulf federal permits are required for charter vessels and headboats (Gulf for-hire permits) to take passengers that pay a fee and wish to retain species managed under the coastal migratory pelagic (CMP) and reef fish fishery management plans. Gulf for-hire permits were initially required for the CMP fishery in 1987 and for the reef fish fishery in 1997. Reef Fish Amendment 20/CMP Amendment 14 (GMFMC 2003) established a three-year moratorium on these permits effective June 16, 2003. Reef Fish Amendment 25/CMP Amendment 17 (GMFMC 2005) created an indefinite limited access program for for-hire vessels effective June 15, 2006. Regulations require a permit vessel decal be displayed on the port side of the deckhouse or hull for all vessels with a Gulf for-hire permit.

The National Marine Fisheries Service (NMFS) Permits Office requested the Gulf of Mexico Fishery Management Council (Council) to consider if these decals are necessary. Reasons for removing the requirement for the vessel decals are:

- the decals are affixed permanently to the vessels but the permits are transferable;
- currently, permit numbers for both fisheries are included on one decal, creating problems if only one permit is transferred;
- the permit numbers on the decals are printed in size 14 font, and are practically illegible unless on board the vessel;
- the color codes are a function of issue date and not expiration date, so multiple colors are valid at any given time; and
- the cost of issuing the decals includes the cost of the stickers (\$2/sticker, approximately 2,000 per year), the cost/maintenance of a special printer (to add specific permit numbers), and staff time.

The NMFS Office of Law Enforcement representatives have indicated that the vessel decals are of limited use for enforcement purposes. Additionally, although the vessel decals are intended to be permanent, the permits themselves are transferable between vessels, which could render an individual vessel decal on a vessel inaccurate. This issue is further exacerbated by the fact that a decal may contain more than one permit number and, if one of those permit numbers is transferred to another vessel, then the whole decal becomes inaccurate. Lastly, due to the nature of being offshore in salt water, the vessel decals tend to fade with time, and become largely illegible unless one is in very close proximity to the vessel.

At its June 2014 meeting, the Council reviewed the utility of the vessel decals. The Council ultimately decided to convene the Law Enforcement Advisory Panel to discuss whether the decals were of use to law enforcement officers and, if the decals were eliminated, what effect such an action might have on the enforcement of fisheries regulations. The Law Enforcement Advisory Panel met at the Council's October 2014 meeting, and verified that the vessel decals were of limited law enforcement use, and did not influence which vessels were randomly approached for inspection on the water. Therefore, at their October 2014 meeting, the Council passed a motion to instruct staff to create a document to eliminate the requirement to carry decals for vessels with Gulf for-hire permits.

The following permits currently require decals and would be affected by this action. The term "Gulf for-hire permits" will collectively refer to these permits throughout the rest of the document.

- Gulf of Mexico Charter/ Headboat for Coastal Migratory Pelagics
- Gulf of Mexico Charter/ Headboat for Reef Fish
- Historical Captain Endorsement for Gulf of Mexico Charter/ Headboat for Coastal Migratory Pelagics
- Historical Captain Endorsement for Gulf of Mexico Charter/ Headboat for Reef Fish

1.3 Current Regulations

Reef Fish

Title 50 § 622.20 Permits and endorsements.

(b) Charter vessel/headboat permits. For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Gulf reef fish, in or from the EEZ, a valid charter vessel/headboat permit for Gulf reef fish must have been issued to the vessel and must be on board.

(1) Limited access system for charter vessel/headboat permits for Gulf reef fish. No applications for additional charter vessel/headboat permits for Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (b)(1)(i) of this section, and are subject to the renewal requirements in paragraph (b)(1)(ii) of this section.

(iii) Requirement to display a vessel decal. Upon renewal or transfer of a charter vessel/headboat permit for Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for Gulf reef fish. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

CMP

Title 50 § 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

(d) Requirement to display a vessel decal. Upon renewal or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, the RA will issue the owner of the permitted vessel a vessel decal for that fishery. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

CHAPTER 2. REGULATORY IMPACT REVIEW

2.1 Introduction

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 rule that would eliminate the requirement for vessels issued a Gulf for-hire permit to display a vessel decal for that fishery.

2.2 Problems and Objectives

The problems and objectives for this proposed action are discussed in Chapter 1.

2.3 Description of the Fishery

This proposed action will only affect vessels issued a Gulf for-hire permit. A description of the for-hire component of the CMP fishery is contained in GMFMC (2014a), and a description of the for-hire component of the reef fish fishery is contained in GMFMC (2014b). These descriptions are incorporated herein by reference.

Information on Gulf charter vessel and headboat operating characteristics is included in Savolainen et al. (2012) and is incorporated herein by reference.

On March 3, 2015, there were 1,334 vessels with a valid (non-expired) or renewable for-hire CMP permits and 1,320 vessels with a valid or renewable for-hire reef fish permits. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to one year after expiration. Most for-hire vessels permitted to operate in either of these fisheries are expected to have both permits. Although the permit application collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a headboat or a charter vessel and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to the NMFS Southeast Region Headboat Survey (SRHS). Participation in the SRHS is based on determination by the Southeast Fishery Science Center (SEFSC) that the vessel primarily operates as a headboat. Sixty-seven vessels were registered in the SHRS as of April 8, 2014 (K. Brennen, NMFS SEFSC, pers. comm.). The average charter vessel is estimated to receive approximately \$82,000 (2014 dollars) in annual revenue. The average headboat is estimated to receive approximately \$249,000 (2014 dollars) in annual revenue.

2.4 Management Measures Contained in this Proposed Action

This proposed action would eliminate the requirement for vessels issued a Gulf for-hire permit to display a vessel decal for that fishery.

2.5 Economic Impacts of the Proposed Action

The only impact that would be expected to occur as a result of this proposed action is a minor reduction in the time and labor associated with the receipt, handling, and display of the respective vessel decals when received. No fee is attached to the permit application to account for the administrative cost of these decals and no additional information is required in the application process beyond that required for the permit. As a result, the cost of the permit to fishermen would be unaffected by the proposed elimination of the decal requirement. The time and labor associated with the receipt, handling, and display of these decals are expected to be minimal. Nevertheless, for-hire vessel operators would no longer have to expend this time or associated labor costs. Additionally, the administrative costs of purchase and processing these decals would be eliminated. Otherwise, no economic impacts would be expected to occur as a result of this proposed action.

2.6 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.....	\$5,000
NMFS administrative costs of document preparation, meetings, and review.....	\$10,000
TOTAL.....	\$16,000

The estimate of public costs provided above does not include any law enforcement costs. The proposed elimination of the vessel decal requirements may result in a minor reduction in enforcement burden because agents would no longer need to examine these decals.

2.7 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 3. REGULATORY FLEXIBILITY ACT ANALYSIS

3.1 Introduction

The purpose of the Regulatory Flexibility Act (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 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.

With certain exceptions, the RFA requires agencies to conduct an initial regulatory flexibility analysis (IRFA) for each proposed rule. The IRFA 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 IRFA is conducted to primarily determine whether the proposed action would have a “significant economic impact on a substantial number of small entities.” The IRFA 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; and, 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule.

3.2 Statement of the need for, objectives of, and legal basis for the rule

A discussion of the need for and objectives of this proposed action is provided in Chapter 1. In summary, the purpose of this proposed action is to eliminate the requirement for vessels issued a Gulf for-hire permit to display a vessel decal for that fishery. The objective of this proposed rule is to reduce the regulatory burden associated with this requirement. The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for this proposed action.

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

This proposed action would directly apply to all vessels with a Gulf for-hire permit. Headboats, which charge a fee per passenger, and charter vessels, which charge a fee on a whole vessel basis, are types of vessel operations that participate in the for-hire fishing sector. A Gulf for-hire permit is required for for-hire vessels to harvest CMP and reef fish species in federal waters in the Gulf. On March 3, 2015, there were 1,334 vessels with a valid (non-expired) or renewable for-hire CMP permits and 1,320 vessels with a valid or renewable for-hire reef fish permits. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to one year after expiration. Many for-hire vessels permitted to operate in either of these fisheries have both permits, but the number of unique vessels across both fisheries is unknown at the time of this analysis. Nevertheless, assuming not all vessels with a for-hire reef fish permit have a CMP permit, this proposed action would directly apply to more than 1,334 vessels.

Although the permit application collects information on the primary method of operation, the Gulf for-hire permit itself does not identify the permitted vessel as either a headboat or a charter vessel and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to the NMFS Southeast Region Headboat Survey (SRHS). Participation in the SRHS is based on determination by the Southeast Fishery Science Center (SEFSC) that the vessel primarily operates as a headboat. Sixty-seven vessels were registered in the SHRS in 2014 (K. Brennen, NMFS SEFSC, pers. comm.).

NMFS has not identified any other small entities that might 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 \$7.5 million (NAICS code 487210, for-hire businesses) for all its affiliated operations worldwide. The average charter vessel is estimated to receive approximately \$82,000 (2014 dollars) in annual revenue and the average headboat is estimated to receive approximately \$249,000 (2014 dollars) in annual revenue. Therefore, all for-hire businesses expected to be directly affected by this proposed action are believed to be small business entities.

3.4 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 requirement and the type of professional skills necessary for the preparation of the report or records

This proposed action would eliminate the requirement that vessels issued a Gulf for-hire permit to display a vessel decal for that fishery. As a result, this proposed action would simplify compliance requirements and no special professional skills would be expected to be required.

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

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

3.6 Significance of economic impacts on small entities

Substantial number criterion

This proposed action would be expected to directly apply to more than 1,334 small business entities.

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 believed 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?

This proposed action, if implemented, would be expected to result in a minor reduction in the time and labor associated with the receipt, handling, and display of vessel decals on fishing vessels issued Gulf for-hire permits. No fee is attached to the permit application to account for the administrative cost of these decals and no additional information is required in the application process beyond that required to receive the permit. As a result, the cost of the permit or time-burden to vessel operators applying for these permits would be unaffected. The time and labor associated with the receipt, handling, and display of these decals are expected to be minimal. Nevertheless, for-hire vessel operators would no longer have to expend this time or

incur the associated labor costs and, though minor, the expected economic effects on small entities would be positive. As a result, this proposed action would not be expected to significantly reduce the profits of a substantial number of small entities.

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

This proposed action, if implemented, would not be expected to have a significant direct adverse economic effect on the profits of a substantial number of small entities. As a result, the issue of significant alternatives is not relevant.

CHAPTER 4. REFERENCES

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