

proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

#### Consideration of Public Comments

Comments received by the end of the comment period on the notice of availability of the FMP, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 13C. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 13C or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** May 12, 2006.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 622 and 635

[Docket No. 060425111-6111-01; I.D. 041906B]

**RIN 0648-AN09**

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 18A

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 18A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 18A) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would prohibit vessels from retaining reef fish caught under the recreational size and bag/possession limits when commercial quantities of Gulf reef fish are on board; adjust the number of persons allowed onboard when a vessel

with both commercial and charter vessel/headboat reef fish permits and a Certificate of Inspection (COI) is fishing commercially; prohibit use of Gulf reef fish, except sand perch or dwarf sand perch, as bait in any commercial or recreational fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico, with a limited exception for crustacean trap fisheries; require a NMFS-approved vessel monitoring system (VMS) on board vessels with Federal commercial permits for Gulf reef fish, including charter vessels/headboats with such commercial permits; and require owners and operators of vessels with Federal commercial or charter vessel/headboat permits for Gulf reef fish to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species, and comply with guidelines for proper care and release of incidentally caught sawfish and sea turtles. NMFS is also proposing to require annual permit application rather than application every 2 years (biennial). In addition, Amendment 18A would revise the total allowable catch (TAC) framework procedure to reflect current practices and terminology. The intended effects of this proposed rule are to improve enforceability and monitoring in the reef fish fishery in the Gulf of Mexico and to reduce mortality of incidentally caught sea turtles and smalltooth sawfish.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on July 3, 2006.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-AN09.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AN09.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Peter Hood.

Copies of the Amendment 18A, which includes a Regulatory Impact Review (RIR), an Initial Regulatory Flexibility Analysis (IRFA), and an Environmental Assessment, may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813-348-1630; fax: 813-348-1711; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org). Copies of the amendments may also be

downloaded from the Council's Web site at [www.gulfcouncil.org](http://www.gulfcouncil.org).

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address and to David Rostker, Office of Management and Budget (OMB), by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:**

Peter Hood, telephone: 727-824-5305; fax: 727-824-5308; e-mail:

[Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that was prepared by the Council. The FMP was approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

#### Background

This proposed rule is intended to resolve several issues related to monitoring and enforcement of existing regulations and to reduce bycatch mortality of incidentally caught endangered sea turtles and smalltooth sawfish. In addition, Amendment 18A would update the framework procedure for setting TAC to reflect current terminology and stock assessment procedures.

#### Simultaneous Commercial and Recreational Harvest on a Vessel

This proposed rule would improve enforceability of the prohibition on sale of reef fish caught under the recreational bag limit by prohibiting persons aboard a vessel with a commercial reef fish permit from retaining reef fish species caught under recreational size and possession limits when the vessel has commercial quantities, i.e., fish in excess of applicable bag/possession limits, of any Gulf reef fish species aboard. By prohibiting retention of recreational reef fish catches on a commercial fishing trip, this alternative adds an at-sea component to enforcement of the prohibition on sale of recreationally caught reef fish. This measure also makes consistent across all reef fish the rules regarding retention of recreationally harvested fish on a commercial fishing vessel. Regulations for red grouper, gag, and black grouper specifically prohibit commercial reef fish vessels from possessing those species during the February 15 to March

15 closed season, but possession of recreational bag limits is allowed during a quota closure for those species, and for other reef fish during any commercial closure of that species. This action explicitly prohibits retention of recreational bag limits of Gulf reef fish on board a vessel that possesses commercial quantities of Gulf reef fish.

#### **Maximum Crew Size on a Charter Vessel/Headboat When Fishing Commercially**

This proposed rule would resolve the discrepancy between United States Coast Guard (USCG) minimum crew size regulations and NMFS' maximum crew size regulations, and address potential safety issues related to spearfishing under the maximum crew size restrictions of the existing NMFS regulations. The USCG regulations currently require a minimum of four persons (two captains and two crew) when a vessel with a COI is out over 12 hours. NMFS' current fishing regulations limit the maximum number of persons on board to three when a vessel with both a commercial and charter vessel/headboat permit is fishing commercially. Since some charter vessels and headboats must have a COI in order to carry passengers for hire, this creates a discrepancy in the regulations for dual-permitted vessels, and there is a need to resolve this discrepancy. In addition, the Council received a request from the operator of a dual-permitted vessel who spearfishes commercially to allow a crew size of four persons when commercially spearfishing, so that for safety purposes, there could be two persons in the boat while there are two divers in the water.

This proposed rule would address these crew size issues by revising the definitions of "Charter vessel" and "Headboat" to clarify that a vessel that has a charter vessel/headboat permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid COI issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel/headboat provided: (1) It is not carrying a passenger who pays a fee; and (2) When underway for more than 12 hours, that vessel meets but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours. A

vessel with a commercial vessel permit for king mackerel and/or Spanish mackerel and a charter vessel/headboat permit for Gulf coastal migratory pelagic fish would still be subject to the 3-person maximum crew size limit if the vessel has commercial quantities of mackerel onboard, regardless of whether the vessel also has a Gulf reef fish charter vessel/headboat permit, a commercial vessel permit for Gulf reef fish, or commercial quantities of Gulf reef fish onboard.

#### **Use of Reef Fish in or from the EEZ for Bait**

It is illegal to cut up reef fish at sea for use as bait. However, it is not illegal to use cut up reef fish that were purchased as bait on shore, nor is it illegal to use a whole reef fish provided it complies with applicable size and bag limits. Allowing cut up reef fish to be used when purchased compromises enforcement of the rules prohibiting the cutting up of reef fish caught at sea because it is difficult to differentiate between the two.

This proposed rule would prohibit using any species in the reef fish management unit or parts thereof, except sand perch and dwarf sand perch, as bait in any commercial or recreational fishery. A limited exception to this prohibition would be provided for reef fish carcasses and offal to be used for bait in trap fisheries for blue crab, stone crab, deep-water crab, and spiny lobster, unless such use was otherwise restricted.

#### **Vessel Monitoring System**

The Reef Fish FMP contains several area-specific regulations where fishing is restricted or prohibited to protect habitat or spawning aggregations, or to reduce fishing pressure in areas that are heavily fished. Unlike size, bag, and trip limits, where the catch can be monitored onshore when a vessel returns to port, area restrictions require at-sea enforcement. However, at-sea enforcement of offshore area restrictions is difficult due to the distance from shore and limited number of patrol vessels. There is a need to improve enforceability of area fishing restrictions through electronic methods.

This proposed rule would require permitted commercial reef fish vessels, including charter vessel/headboats with commercial reef fish vessel permits even when under charter, to be equipped with an operating VMS approved by NMFS for the Gulf reef fish fishery. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided

by a NMFS-approved communication service provider. NMFS would publish in the **Federal Register** a list of approved VMS mobile transmitting units and associated communication service providers that meet the minimum standards for the Gulf reef fish fishery. Upon installation of an approved transmitting unit by a qualified marine electrician and activation of the communication services, a vessel owner or operator would be required to submit to NMFS, Office of Enforcement, Southeast Region, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701, a statement certifying compliance with an installation and activation checklist and a vendor-completed installation certification checklist that would be available from NMFS. The VMS would be required to transmit a signal indicating the vessel's accurate position at least once per hour and must function 7 days a week, 24 hours a day unless exempted by NMFS under the power down exemption of the NOAA Enforcement Draft Vessel Monitoring System Requirements that is included as Appendix E to Amendment 18A. Prior to departure for each trip, a vessel owner or operator would be required to report to NMFS any fishery the vessel would participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that would be on board the vessel. This information could be reported via NMFS' toll-free number, 888-219-9228, or via an attached VMS terminal. The vessel owner would be responsible for the cost of the VMS equipment, installation, maintenance, and month-to-month communications. These VMS requirements would apply throughout the Gulf of Mexico. Compliance with the VMS requirements would be required 120 days after publication of the final rule implementing Amendment 18A.

Vessels fishing exclusively with fish traps would be exempted from the VMS requirement through February 7, 2007, but would remain subject to mandatory trip origination and termination reporting requirements through February 7, 2007. The use of fish traps in the Gulf reef fish fishery is prohibited after February 7, 2007.

#### **Sea Turtle and Smalltooth Sawfish Bycatch**

NMFS concluded in a biological opinion that reasonable and prudent measures should be taken to minimize stress and increase survival rates of any sea turtles and smalltooth sawfish taken in the reef fish fishery. Therefore, measures are needed to comply with the

biological opinion and to enhance the protection of endangered sea turtles and smalltooth sawfish.

This proposed rule would require vessels with commercial or charter vessel/headboat permits for Gulf reef fish to possess a document provided by NMFS titled, "Careful Release Protocols for Sea Turtle Release With Minimal Injury"; post the sea turtle handling and release guidelines provided by NMFS on the vessel; follow specified release handling measures for any smalltooth sawfish that are caught incidentally; and have sea turtle release gear onboard.

#### Measure Proposed by NMFS

NMFS is proposing to revise the renewal requirements applicable to all Magnuson-Stevens Act vessel permits, licenses, endorsements, and dealer permits issued by NMFS' Southeast Regional Office, including applicable highly migratory species permits, to require submission of an application every year rather than requiring submission only every two years (i.e., biennial application). NMFS believes that requiring an annual application would: Provide better permit accountability, particularly regarding permit transfers; provide for better verification of permit application data; and simplify permit financial accounting through annual application payments. Fees for annual application would be half of the current biennial fee; therefore, there would be no increased cost to applicants.

#### Modifications to the TAC Framework Procedure

In addition to the measures contained in this proposed rule as discussed above, Amendment 18A proposes to modify the framework procedure for setting TAC by incorporating the Southeast Data, Assessment, and Review (SEDAR) process and adopting minor wording changes to update the terminology in the framework. The administrative procedures for setting TAC have changed with the development of SEDAR to assess stock status. The framework procedure currently specifies that the Reef Fish Stock Assessment Panel (RFSAP) evaluate stock assessments and recommend acceptable biological catch (ABC) ranges. However, the RFSAP has been discontinued, and stock assessments and ABC recommendations are now conducted through the SEDAR process. In addition, some of the terminology and agency or department names have changed since the last revision of the framework procedure and must be updated accordingly.

#### Classification

At this time, NMFS has not determined whether Amendment 18A, which this proposed rule would implement, is consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment periods on this amendment and on this proposed rule.

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

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from the Council office (see ADDRESSES). A summary of the analysis follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would: (1) Continue allowing vessels to possess both commercial and for-hire vessel permits but disallow retention of reef fish species caught under recreational size and possession limits when the vessel has commercial harvests of any reef fish species aboard; (2) allow a charter vessel/headboat with a USCG COI to increase its crew size but not in excess of its minimum manning requirements outlined in its COI when fishing for reef fish under its commercial fishing license; (3) prohibit the use of any species in the reef fish management unit or parts thereof as bait, with certain exceptions; (4) require the use of VMS systems Gulf-wide for all commercially permitted reef fish vessels, including charter vessels with commercial reef fish permits; and (5) require vessels with commercial and/or charter vessel/headboat reef fish permits to comply with sea turtle and smalltooth sawfish release protocols, possess a set of release gear required by the NMFS' Office of Protected Resources (OPR), and comply with specific guidelines for the proper care of incidentally caught sawfish.

The main objectives of the proposed rule are to resolve certain issues related to monitoring and enforcement of existing regulations and reduce bycatch mortality of incidentally caught endangered sea turtles and smalltooth sawfish.

The proposed rule would impact three types of businesses in the Gulf reef

fish fishery, namely, commercial fishing vessels, recreational for-hire vessels, and fish dealers. At present, the commercial reef fish permits are under a license limitation program, and for-hire reef fish permits are under a moratorium, which is proposed to be converted into a license limitation under a separate amendment. Hence, no new commercial or for-hire reef fish permits will be issued when Amendment 18A is implemented. Currently, there are 1,145 commercial and 1,574 for-hire active vessel permits for the Gulf reef fish fishery. Of these permittees, 237 vessels have both commercial and for-hire vessel permits. Reef fish dealers in the Gulf are required to obtain permits to handle reef fish caught in the Gulf. There are currently 227 dealers permitted to buy and sell reef fish caught in the Gulf. The proposed rule is expected to affect these commercial vessels, for-hire vessels, and fish dealers. The direct effects on dealers would mainly come from the restriction of bait use and only to the extent that dealers supply bait to some fishermen. Data are not available to quantify the extent of this impact.

Average annual gross receipts of commercial reef fish vessels in the Gulf range from \$24,095 for low-volume vertical line vessels to \$116,989 for high-volume longline vessels. The corresponding annual net incomes range from \$4,479 for low-volume vertical line vessels to \$28,466 for high-volume vertical line vessels. Permit records indicate that the maximum number of commercial reef fish permits owned by any single entity is six, so at the maximum this entity would generate a total of \$701,934 in gross receipts. For the for-hire vessels, gross annual receipts range from \$76,960 for charter vessels to \$404,172 for headboats. The corresponding annual operating profits range from \$36,758 for charter vessels to \$338,209 for headboats. Permit records indicate a maximum of 12 permits held by any single entity. At a maximum, this entity would generate a total of \$4,850,064 in gross receipts. A fishing business is considered a small entity if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of \$4.0 million in the case of commercial harvesting entities or \$6.5 million in the case of for-hire entities. Relative to these thresholds, both the commercial vessel and for-hire vessel entities affected by the proposed rule are determined to be small business entities.

According to a survey of reef fish processors, employment (both part and full time) by all reef fish processors in

the Southeast totaled 700 individuals. There is no information regarding employment by fish dealers, although it is safe to assume that dealers employ fewer individuals than processors. A seafood processor (fish dealer) is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 (100) or fewer persons on a full-time, part-time, temporary, or other basis. Given the employment information, it is very unlikely for any processor that holds a reef fish dealer permit to employ 500 or more persons. Although there are no actual data on employment by fish dealers, between 1997 and 2000, on average, in excess of 100 reef fish dealers operated in the Gulf. It is assumed that all processors must be dealers, yet a dealer need not be a processor. Total dealer employment, therefore, is expected to be slightly more than 700 individuals. Given the number of reef fish dealers and estimates of dealer employment, it is unlikely any dealer employs more than 100 persons.

Based on earnings information, the commercial and recreational fishing business entities affected by the proposed rule are determined to be small business entities. It is also very likely that most, if not all, permitted fish dealers affected by the proposed rule are also small business entities. However, as previously noted, this proposed rule's direct effects on dealers would mainly come from the restriction of bait use and only to the extent that dealers supply bait to some fishermen. Data are not available to quantify the extent of this impact. Allowing vessels to be dually permitted (commercial and for-hire) would enable some 227 vessels to continue their usual operations. Disallowing these vessels to possess recreationally caught reef fish when commercial quantities of reef fish are aboard would improve enforcement without significantly impacting the operations of these dually permitted vessels. Allowing a for-hire vessel to increase its crew size but not in excess of its minimum manning requirements outlined in its COI affords flexibility in operation and helps to assure safety at sea of the crew, particularly for vessels using spearfish gear. This would also eliminate the discrepancy between current fishing rules and USCG requirements with respect to crew size of for-hire vessels. The prohibition on the use of reef fish, except sand perch and dwarf sand perch, as bait reinforces the current ban on cutting up reef fish at sea and regulations on bait. The economic impact of this provision on commercial and for-hire vessels cannot

be estimated but is expected to be relatively small. The VMS requirement is expected to improve the efficacy of enforcement efforts and the effectiveness and timeliness of at-sea rescue efforts. One-time and recurring costs would be incurred by all commercial reef fish vessels, including for-hire vessels with commercial reef fish permits. First-year compliance costs range from \$2,032 to \$3,651 per vessel. These costs could be substantial, particularly relative to the profits of small-time vessel operations. The various requirements addressing the bycatch issue relative to sea turtles and smalltooth sawfish would affect all commercial and for-hire vessels in the reef fish fishery. Out-of-pocket expenses are estimated between \$267 and \$459 per vessel. These are mainly costs for equipping vessels with the required gear. Because some of the gear would last for some time, costs would in effect be spread over a number of years.

The proposed rule would alter some reporting, record-keeping, and other compliance requirements. The VMS requirement would affect all vessels with commercial and/or for-hire reef fish permits. Including installation by a qualified marine electrician, equipment costs range from \$1,600 to \$2,900 per vessel. In addition, yearly communication costs range from \$432 to \$751 per vessel. The proposed rule also contains changes to the application process for renewal of permits. However, the new requirement for yearly application is not expected to alter burden time or costs to respondents. The availability of the permit renewal application as an on-line document, as well as the reduced burden time attributable to the changes of the income qualification affidavit, should offset any increases in burden hours generated by the yearly renewal. Permit applications would cost half of their previous amount, but would be required twice as often, thereby offsetting any changes in overall cost. Compliance with sea turtle and smalltooth sawfish release protocols would also affect all vessels with commercial and/or for-hire reef fish permits. Costs range from \$267 to \$459 per vessel.

Other than the provision on vessel manning requirements, which removes the conflict between NMFS and USCG regulations, no other Federal rules have been identified that would duplicate, overlap, or conflict with the proposed rule.

The proposed rule is expected to affect a substantial number of small entities. A total of 908 commercial vessels only, 1,337 for-hire vessels only,

and 237 commercial/for-hire vessels would be affected. Since practically all entities affected by the proposed rule are small entities, the issue of disproportional effects on small versus large entities does not arise. Mainly because of the VMS requirement, for which compliance costs range from \$1,600 to \$2,900 per vessel, and the sea turtle and smalltooth sawfish release protocols, for which compliance costs range from \$267 to \$459 per vessel, the proposed rule would have substantial adverse impacts on the profitability of affected vessels, particularly the smaller and marginal operations.

This amendment considered several alternatives to the proposed rule. For vessels with both commercial and for-hire reef fish permits (dual-permitted vessels), two other alternatives have been considered. Alternative 1 (status quo) continues to allow vessels to be dually permitted, but it does not resolve the problem of identifying whether caught fish are saleable (commercial trip) or not (charter trip). Alternative 3, which would preclude a vessel from being dual-permitted, would adversely affect the fishing operations of dual-permitted vessels by forcing them to divest of either the commercial or for-hire permit. Regarding crew size of for-hire vessels fishing under their commercial permits, four other alternatives have been considered. Alternative 1 (status quo), which limits for-hire vessel crew size to 3 persons, would not be compatible with minimum USCG manning requirements. Alternative 3, which is similar to the proposed rule except for spearfishing vessels, would benefit the spearfishing vessels but at the same time make the crew size for these vessels incompatible with USCG manning requirements. Alternative 4, which allows a maximum crew size of 4 persons, would also be incompatible with USCG manning requirements. Alternative 5, which removes the maximum crew size requirements for dual-permitted vessels, creates the same enforcement problem as the status quo and also allows a potential increase in fishing effort. Regarding use of reef fish as bait, two other alternatives (with various sub-alternatives) have been considered. Alternative 1 (status quo), which allows whole reef fish that meet the specified requirements for bait or cut-up reef fish purchased at shore for bait, complicates the enforcement of the ban on cutting up reef fish at sea and potentially increases the mortality of certain reef fish species. Alternative 3, which effectively requires enforcement officials to identify reef fish species

used as bait before assessing any potential violation, would tend to complicate enforcement. For the VMS requirement, two other alternatives have been considered. Alternative 1 (status quo), which does not require VMS, is the least costly to small entities, but it does not address vital enforcement and rescue-at-sea issues. Similar to the proposed rule, Alternative 3 requires VMS, but vessel owners would shoulder only the yearly communication costs. If government resources are available, this alternative would be better for the industry than the proposed rule. Regarding sea turtle and smalltooth sawfish bycatch, five other alternatives have been considered. Alternative 1 (status quo) is the least costly of all alternatives to small entities, but it would not address the bycatch of sea turtles and smalltooth sawfish in commercial and for-hire reef fish vessels. Alternative 2, which requires commercial vessels to abide by the release protocols in effect in the HMS bottom longline fishery, would impose a compliance cost ranging from \$202 to \$380. Alternative 3, which requires the commercial reef fish fleet to comply with the more stringent requirement in place in the HMS pelagic longline fishery, would carry a compliance cost of \$712 to \$1,282 per vessel. Alternative 4 requires for-hire reef fish vessels to comply with either the less stringent release protocol as in Alternative 2 or the more stringent release protocol as in Alternative 3. The corresponding compliance costs per vessel would be similar to those in Alternative 2 or 3. Alternative 5, which requires commercial and for-hire reef fish vessels to comply with the sea turtle release protocols in place for the Atlantic HMS bottom longline vessels, would impose a compliance cost of \$202 to \$380 per vessel.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA)—namely, requirements for: (1) VMS installation; (2) completion and submission of certification of VMS installation and activation; (3) transmission of position reports; (4) fishing activity reports; (5) annual maintenance of VMS; (6) submission of requests for power down exemptions; and (7) annual renewal of all permits. These requirements have been submitted to OMB for approval. The public reporting burdens per response for these collections of information are estimated to average 4 hours, 15 minutes, 24 seconds, 1 minute, 2 hours, 10 minutes, and 15 minutes

respectively. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202-395-7285.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects

##### 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

##### 50 CFR Part 635

Endangered and threatened species, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Statistics, Treaties.

Dated: May 12, 2006.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 622 and 635 are proposed to be amended as follows:

#### **PART 622—FISHERIES OF THE CARIBBEAN, GULF, 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 § 622.2, the definitions of “Charter vessel” and “Headboat” are revised in alphabetical order to read as follows:

#### **§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Charter vessel* means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew. However, a charter vessel that has a charter vessel permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid Certificate of Inspection (COI) issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel provided—

(1) It is not carrying a passenger who pays a fee; and

(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

\* \* \* \* \*

*Headboat* means a vessel that holds a valid Certificate of Inspection (COI) issued by the USCG to carry more than six passengers for hire.

(1) A headboat with a commercial vessel permit, as required under § 622.4(a)(2), is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(i) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's COI; or

(ii) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish, when there are more than three persons aboard, including operator and crew.

(2) However a vessel that has a headboat permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid COI issued by the USCG to carry passengers for hire will not be considered to be operating as a headboat provided—

(i) It is not carrying a passenger who pays a fee; and

(ii) When underway for more than 12 hours, that vessel meets, but does not

exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

\* \* \* \* \*

3. In § 622.4, paragraph (h)(1) is revised, and a sentence is added at the end of paragraph (m)(1) to read as follows:

**§ 622.4 Permits and fees.**

\* \* \* \* \*

(h) \* \* \*

(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel owner or dealer who has been issued a permit, license, or endorsement under this section must renew such permit, license, or endorsement on an annual basis. The RA will mail a vessel owner or dealer whose permit, license, or endorsement is expiring an application for renewal approximately 2 months prior to the expiration date. A vessel owner or dealer who does not receive a renewal application from the RA by 45 days prior to the expiration date of the permit, license, or endorsement must contact the RA and request a renewal application. The applicant must submit a completed renewal application form and all required supporting documents to the RA prior to the applicable deadline for renewal of the permit, license, or endorsement and at least 30 days prior to the date on which the applicant desires to have the permit made effective. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

\* \* \* \* \*

(m) \* \* \*

(1) \* \* \* An application for renewal or transfer of a commercial vessel permit for Gulf reef fish will not be considered complete until proof of purchase, installation, activation, and operational status of an approved VMS for the vessel receiving the permit has been verified by NMFS VMS personnel.

\* \* \* \* \*

4. In § 622.7, paragraph (ff) is added to read as follows:

**§ 622.7 Prohibitions.**

\* \* \* \* \*

(ff) Fail to comply with the protected species conservation measures as specified in § 622.10.

5. Section 622.9 is revised to read as follows:

**§ 622.9 Vessel monitoring systems (VMSs).**

(a) *Requirements for use of a VMS—*

(1) *South Atlantic rock shrimp.* An owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp must ensure that such vessel has an operating VMS approved by NMFS for use in the South Atlantic rock shrimp fishery on board when on a trip in the South Atlantic. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(2) *Gulf reef fish.* An owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit even when under charter, must ensure that such vessel has an operating VMS approved by NMFS for use in the Gulf reef fish fishery on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power down exemption of the NOAA Enforcement Draft Vessel Monitoring System Requirements as included in Appendix E to Final Amendment 18A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. The NOAA Enforcement Draft Vessel Monitoring System Requirements document is available from NMFS, Office of Enforcement, Southeast Region, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701; phone: 800-758-4833. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. Unless exempted under the power down exemption, a VMS must transmit a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day. Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel.

This information may be reported to NMFS using the toll-free number, 888-219-9228, or via an attached VMS terminal. The VMS requirements of this paragraph apply throughout the Gulf of Mexico. An owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish with a fish trap endorsement and that fishes exclusively with fish traps is exempt from the VMS requirements of this paragraph through February 7, 2007.

(b) *Installation and activation of a VMS.* Only a VMS that has been approved by NMFS for the applicable fishery may be used, and the VMS must be installed by a qualified marine electrician. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS, Office of Enforcement, Southeast Region, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701; phone: 800-758-4833; and

(2) Submit to NMFS, Office of Enforcement, Southeast Region, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701, a statement certifying compliance with the checklist, as prescribed on the checklist.

(3) Submit to NMFS, Office of Enforcement, Southeast Region, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701, a vendor-completed installation certification checklist, which is available from NMFS, Office of Enforcement, Southeast Region, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701; phone: 800-758-4833.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS, Office of Enforcement, Southeast Region, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701, phone: 800-758-4833, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated

by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of fish in a fishery subject to VMS requirements in this section, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

6. In subpart A, § 622.10 is added to read as follows:

**§ 622.10 Conservation measures for protected resources.**

(a) *Atlantic dolphin and wahoo pelagic longliners.* The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(2)(xii), and that has on board a pelagic longline must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS. Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, as specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively. For the purpose of this paragraph, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(b) *Gulf reef fish commercial vessels and charter vessels/headboats—(1) Sea turtle conservation measures.* The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, "Careful Release Protocols for Sea Turtle Release With Minimal Injury," and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS. Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board a dipnet, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags.

This equipment must meet the specifications described in 50 CFR 635.21(c)(5)(i)(E-L) with the following modifications: the dipnet handle can be of variable length, only one NMFS approved short-handled dehooker is required (i.e., CFR 635.21(c)(5)(i)(G or H)); and life rings, seat cushions, life jackets, and life vests may be used as alternatives to tires for cushioned surfaces as specified in 50 CFR 635.21(c)(5)(i)(F). Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, long-handled line clipper, a short-handled and a long-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in 50 CFR 635.21(c)(5)(i) (A-L) with the following modifications: only one NMFS approved long-handled dehooker (50 CFR 635.21(c)(5)(i)(B or C)) and one NMFS-approved short-handled dehooker (50 CFR 635.21(c)(5)(i)(G or H)) are required; and life rings, seat cushions, life jackets, and life vests may be used as alternatives to tires for cushioned surfaces as specified in 50 CFR 635.21(c)(5)(i)(F).

(2) *Smalltooth sawfish conservation measures.* The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, that incidentally catches a smalltooth sawfish must--

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except for with a long-handled dehooker.

7. In § 622.31, paragraph (n) is added to read as follows:

**§ 622.31 Prohibited gear and methods.**

(n) Gulf reef fish other than sand perch or dwarf sand perch may not be used as bait in any fishery, except that, when purchased from a fish processor, the filleted carcasses and offal of Gulf reef fish may be used as bait in trap fisheries for blue crab, stone crab, deep-water crab, and spiny lobster.

8. In § 622.34, a sentence is added at the end of paragraph (l) to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

\* \* \* \* \*

(l) \* \* \* Also note that if commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, are on board the vessel, no bag limit of Gulf reef fish may be possessed, as specified in § 622.39(a)(5).

\* \* \* \* \*

9. In § 622.36, a sentence is added at the end of paragraph (a) to read as follows:

**§ 622.36 Seasonal harvest limitations.**

(a) \* \* \* Also note that if commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, are on board the vessel, no bag limit of Gulf reef fish may be possessed, as specified in § 622.39(a)(5).

\* \* \* \* \*

10. In § 622.37, paragraph (d)(4) is added to read as follows:

**§ 622.37 Size limits.**

\* \* \* \* \*

(d) \* \* \*

(4) A person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, may not possess any Gulf reef fish that do not comply with the applicable commercial minimum size limit.

\* \* \* \* \*

11. In § 622.38, a sentence is added at the end of paragraph (d)(1) introductory text to read as follows:

**§ 622.38 Landing fish intact.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* See § 622.31(m) regarding a prohibition on the use of Gulf reef fish as bait.

\* \* \* \* \*

12. In § 622.39, paragraph (a)(2)(iii) is revised, and paragraph (a)(5) is added to read as follows:

**§ 622.39 Bag and possession limits.**

(a) \* \* \*

(2) \* \* \*

(iii) For a species/species group when its quota has been reached and closure has been effected, provided that no commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, are on board as specified in § 622.39(a)(5).

\* \* \* \* \*

(5) A person aboard a vessel that has a Federal commercial vessel permit for

Gulf reef fish and commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, may not possess Gulf reef fish caught under a bag limit.

\* \* \* \* \*

#### **§ 622.41 [Amended]**

13. In § 622.41, paragraph (l)(2) is removed and reserved.

14. In § 622.43, paragraph (a)(1)(iii) is removed; the suspension of paragraph (a)(1)(i) is lifted; and paragraph (a)(1)(i) is revised to read as follows:

#### **§ 622.43 Closures.**

(a) \* \* \*

(1) \* \* \*

(i) *Commercial quotas.* The application of bag limits described in this paragraph (a)(1)(i) notwithstanding, bag limits of Gulf reef fish may not be possessed on board a vessel with commercial quantities of Gulf reef fish,

i.e., Gulf reef fish in excess of applicable bag/possession limits, on board, as specified in § 622.39(a)(5).

(A) If the recreational fishery for the indicated species is open, the bag and possession limits specified in § 622.39(b) apply to all harvest or possession in or from the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited. In addition, the bag and possession limits for red snapper, when applicable, apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested.

(B) If the recreational fishery for the indicated species is closed, all harvest or possession in or from the Gulf EEZ of the indicated species is prohibited.

\* \* \* \* \*

#### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

15. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

16. In § 635.4, the second sentence of paragraph (m)(1) is revised to read as follows:

#### **§ 635.4 Permits and fees.**

\* \* \* \* \*

(m) \* \* \*

(1) \* \* \* A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. \* \* \*

\* \* \* \* \*

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