

for physicians, non-physicians and suppliers who wish to provide data to us in computing RVUs under the physician fee schedule, there are no budgetary implications arising from this rule. The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million or more in any year. This interim final rule with comment period will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395(h), and 1395rr(b)(1)).

2. In § 414.22, the introductory text is republished and paragraph (b)(6) is revised to read as follows:

§ 414.22 Relative value units (RVUs).

CMS establishes RVUs for physicians' work, practice expense, and malpractice insurance.

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(b) *Practice expense RVUs.* * * *

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(6)(i) CMS establishes criteria for supplemental surveys regarding specialty practice expenses submitted to CMS that may be used in determining practice expense RVUs.

(ii) Any CMS-designated specialty group may submit a supplemental survey.

(iii) CMS will consider for use in determining practice expense RVUs for the physician fee schedule survey data and related materials submitted to CMS by August 1, 2002 to determine CY 2003 practice expense RVUs and by August 1, 2003 to determine CY 2004 practice expense RVUs.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 21, 2002.

Thomas A Scully,
Administrator, Centers for Medicare & Medicaid Services.

Approved: June 5, 2002.

Tommy G. Thompson,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 020313055-2148-02; I.D. 021902F]

RIN 0648-AO62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Charter Vessel and Headboat Permit Moratorium

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 14) and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20). This final rule establishes a 3-year moratorium on the issuance of charter vessel or headboat (for-hire) permits for the reef fish fishery and coastal migratory pelagics fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico. Also, as a consequence of the moratorium, the current charter vessel/headboat permit for coastal migratory pelagic fish is

restructured to provide separate permits for the Gulf of Mexico and South Atlantic. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effect of this final rule is to cap the number of for-hire vessels operating in these respective fisheries at the current level while the Gulf of Mexico Fishery Management Council (Council) evaluates the need for further management actions that may be needed to rebuild these fishery resources, and promote attainment of optimum yield.

DATES: This final rule is effective July 29, 2002, except for the revisions to §§ 622.5(b)(1) and 622.43(a)(3)(ii), which are effective December 26, 2002.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) and copies of a supplemental environmental assessment prepared by NMFS are available from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments on the collection-of-information requirements contained in this final rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Phil.Steele@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 (Reef Fish FMP) that was prepared by the Council. The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) that was prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were 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.

On February 27, 2002, NMFS announced the availability of Amendments 14 and 20 and requested public comment on them (67 FR 8926).

A proposed rule to implement the measures in these amendments, with a request for comments, was published on March 25, 2002 (67 FR 13587). NMFS approved the amendments on May 29, 2002. The background and rationale for the measures in the amendments and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

NMFS received four comments addressing the proposed amendment and 17 comments addressing the proposed rule. Additionally, two nearly identical minority reports, each signed by two Council members, objecting to the implementation of the proposed charter vessel/headboat moratorium were submitted. No comments on the initial regulatory flexibility analysis were received. All comments and the minority reports are summarized and responded to here.

Comment 1: Two nearly identical minority reports, each signed by two Council members, objecting to the implementation of the proposed charter vessel/headboat moratorium were submitted. The primary objections expressed in these minority reports were that the moratorium is not necessary, would not accomplish its stated goal, would reduce competition in the for-hire industry, would create a windfall profit for a select group of people and deny others the right to pursue an occupation of their own choice, would result in unnecessary social engineering, and would violate national standards 4 and 8 of the Magnuson-Stevens Act.

Response: The Council, in cooperation with the Gulf charter vessel/headboat industry, developed the moratorium to address issues of increased fishing effort and fishing mortality rates in the for-hire sector of the recreational fishery. Further, the overfished status of several of the major stocks targeted by and the continuing expansion of the recreational-for-hire sector are problems that support the development and implementation of this moratorium. In 1998, there were an estimated 3,220 recreational for-hire vessels in the Gulf of Mexico. Of these for-hire vessels, there are an estimated 1,275 charter vessels and 92 headboats; the remainder are probably smaller guide boats that usually fish inshore. The number of charter boats operating in the Gulf of Mexico has increased from 516 in 1981 to 1,275 in 1998 (147 percent), while the number of headboats has remained relatively stable during the same period. Further, the number of individual angler charter vessel trips

increased by approximately 51 percent (through 1998) over the average number of trips from the previous decade.

During this same period, there has been an increase in the number of Gulf of Mexico fish stocks identified as overfished or approaching an overfished state. In the January 2001 report to Congress on the Status of U.S. Fisheries, red snapper and red grouper were classified as being overfished and undergoing overfishing. Gag grouper was classified as undergoing overfishing and approaching an overfished state. King mackerel was classified as overfished and vermilion snapper was classified as undergoing overfishing. Further, the Council was notified, by a letter from NMFS in February 2001, that greater amberjack was overfished. While all sectors have contributed to the overfished status of these important fisheries, increased fishing effort and fishing mortality rates by the for-hire sector in recent years have substantially increased the proportion of landings attributed to that sector. The percent of recreational red grouper, by number, landed by the recreational for-hire sector increased from 14 percent (1988–1989) to 32 percent (1996–1997) of the total recreational landings; the percentage of recreational red snapper, by number, landed by the recreational for-hire sector increased from 34 percent (1981–1982) to 62 percent (1988–1989) to 71 percent (1996–1997) of the total recreational landings. This increased catch by the recreational for-hire sector has contributed to the progressively earlier closures of the red snapper recreational fishery each year. This fishery was closed on November 27 in 1997, September 30 in 1998, and August 29 in 1999. This progressively longer closure period is adversely impacting the charter vessel/headboat sector that is dependent on this stock. Additionally, for king mackerel, the percent recreational landings, by number, caught by the recreational for-hire fishery increased from 17 percent in 1983, to 32 percent in 1988, and to 62 percent in 1997, almost doubling between each period. The landings for gag grouper increased from 15 percent during 1981–1982 to 33 percent during 1995–1996, i.e., essentially doubling between the first and last period. Further, recreational for-hire vessels historically have landed most of the recreational landings of vermilion snapper (90 percent) and greater amberjack (63 percent) during the period 1995–1996.

In conjunction with existing bag limits and size limits, the moratorium will further moderate short-term increases in fishing effort in the for-hire

sector of the recreational fishery by limiting the number of vessels in the fishery. The moratorium is a form of limited access management that is intended to temporarily stabilize this effort. It will allow the Council the time necessary to develop a more comprehensive approach to help restore overfished stocks and will promote attainment of optimum yield during the interim.

In developing the moratorium program present participation in the fisheries was considered to the fullest extent possible. It became obvious in the development of the moratorium, and from public comment, that there were numerous vessels operating in the Gulf recreational for-hire fisheries that had not obtained permits. Apparently, some participants were unaware of the permit requirements. As the Council continued development of the amendment, more for-hire fishermen became aware of the permit requirement and obtained permits. The number of vessels operating out of the Gulf (including Monroe County, FL) ports with permits for the reef fish or coastal migratory pelagic fisheries was 940 on November 18, 1998 (old control date), and 1,650 vessels by August 2000, or an increase of 75 percent. To ensure that the current participants had an opportunity to be included, the Council selected March 29, 2001, as the new control date for eligibility. This takes into full consideration historical fishing practices and dependence on the fisheries and clearly does not discriminate based on state of residence. Regarding potential windfall profits to current permit holders who choose to sell their permits, the value of these permits and their projected profitability can not be estimated at this time. However, Ditton and Loomis (1985), and Ditton and Vize (1987), found a relatively high turnover rate in the charter fishing industry in Texas, reaching 52 percent over 5 years and 75 percent over 10 years. Such a high turnover rate in the recreational for-hire sectors should make a substantial number of these permits readily available (permits are fully transferrable under provisions of the moratorium) and reduce the potential for windfall profits.

Additionally, the minority reports concern that the permit moratorium violates national standard 8 is not warranted. The economics of the fisheries, and the cultural and social framework relevant to the fisheries and fishing communities were a prime consideration of the Council in establishing the moratorium. The moratorium and accompanying control

date should effectively allow qualification and continued operation of nearly all vessels or business entities currently participating in these fisheries and, thereby, not alter the economic, social, or cultural framework of the fishing communities, other than through the short term preclusion of participation expansion. During the moratorium, new participation into the fisheries could still occur through the transfer of existing permits, albeit at a higher entry cost than in the absence of the moratorium. Thus, new entry could continue to occur without resulting in increased fishing mortality rates on the affected stocks. In the absence of the moratorium, under status quo conditions, entry of new vessels into the fishery could continue unabated. This would result in increased participation, thereby increasing fishing mortality rates on the stocks, which may necessitate more restrictive regulations on the harvest of individual species. This would be expected to produce declines in angler benefits and participation, for-hire and support industry profitability, and degradation of the social and cultural framework surrounding these fisheries. The temporary reduction in increased fishing mortality rates, through the cap on participation, should forego these adverse conditions.

Further, the Council and NMFS prepared a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA) that assess the socioeconomic effects of the preferred measures and alternatives considered by the Council and NMFS. The costs and benefits of the rule are assessed in the RIR and the economic impacts on small entities are assessed in the RIR/FRFA. The Council considered the economic implications of each alternative for achieving the management objective of moderating short-term future increases in fishing effort while attempting to stabilize fishing mortality in the for-hire sector of the recreational fishery. The FRFA identifies the alternatives with less economic impacts on small entities and sets forth the reasons why such alternatives were rejected. NMFS believes that the approved measures were based on the best available scientific information and will achieve the management objective in a fair and equitable manner, while minimizing the adverse economic impacts to the extent practicable.

Comment 2: Two individuals opposing the amendment stated that the public had not received adequate notification of the amendment.

Response: Two sets of public hearings for the Draft Charter Vessel/Headboat

Moratorium Amendment were held at 10 locations throughout the Gulf of Mexico from Port Isabel, TX, to Madeira Beach, FL, during the period December 6, 1999, through December 15, 1999, and February 5, 2001, through February 21, 2001. In addition, public testimony on the proposed moratorium was heard at the Council meeting in Mobile, AL, on March 12, 2001. Further, an advanced notice of proposed rulemaking to establish the March 29, 2001, control date was published in the Federal Register on June 14, 2001 (66 FR 32312). Additionally, following the Council's submission of the amendment to NMFS for Secretarial review, a notice of availability announcing the amendment was published in the **Federal Register** on February 27, 2002 (67 FR, 8926). Comments were accepted from the public through April 29, 2002. The proposed rule and request for comments were published in the **Federal Register** on March 25, 2002 (67 FR, 13587). Comments were accepted through May 9, 2002. Finally, two NMFS Southeast Fisheries Bulletins announcing the public comment period for the proposed amendment and final rule were distributed on April 3, 2002.

Comment 3: Seven individuals stated that the permit moratorium restricted free enterprise throughout the recreational for-hire sector.

Response: During the moratorium, new participation into the fisheries can still occur through the transfer of existing permits, albeit at a higher entry cost than in the absence of the moratorium. Thus, new entry can continue to occur without resulting in increased fishing mortality rates on the affected stocks.

Comment 4: One individual stated that NMFS lacked sufficient catch data for the recreational for-hire sector to support a moratorium on the issuance of new permits.

Response: NMFS believes that the approved measures are based on the best available science and are consistent with the precautionary approach to fisheries management. Sufficient scientific information (see Response to Comment 1) suggests that the number of charter boats and individual angler charter vessel trips have increased substantially over the past decade. During this same period, there has been an increase in the number of fish stocks identified as overfished or approaching an overfished state that are targeted by the recreational for-hire sector (i.e., red snapper, red grouper, gag grouper, vermillion snapper, and greater amberjack). While all sectors have contributed to the overfished status of these important fisheries, increased

fishing effort and fishing mortality rates by the recreational for-hire sector in recent years have substantially increased the proportion of landings attributed to that sector. This increase in fishing effort and fishing mortality rates in the for-hire sector of the recreational fishery further support the implementation of the moratorium.

Change From the Proposed Rule

In § 622.4(r)(4), NMFS removed the third sentence which read, "No more than one owner of a currently permitted vessel will be credited with meeting the permit history criterion based on a vessel's permit history." This sentence is unnecessary and ambiguous. The sentence was intended to clarify that in cases where ownership of a permitted vessel involved multiple persons (e.g., joint ownership or a corporation) eligibility would apply to the single owning entity not to each of the individuals constituting the owning entity. However, the sentence could be misinterpreted as meaning that if a permitted vessel was owned by two or more different owners during the qualifying period for eligibility, only one of those owners would be eligible for a permit under the moratorium. That is incorrect and inconsistent with the intent.

Further, because it is standard practice to treat multi-person ownership as a single owner, the sentence is unnecessary and has been removed from the final rule.

Classification

The Administrator, Southeast Region, NMFS determined that Amendments 14 and 20, which this final rule implements, are necessary for the conservation and management of the coastal migratory pelagics and reef fish fisheries of the Gulf of Mexico and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared an FRFA that describes the economic impact that this final rule will have on small entities. A description of the action, why it is being implemented, and the legal basis for this action are contained in the preamble of this final rule. A description of significant alternatives to the proposed rule and a discussion of how the alternatives attempt to minimize economic impacts on small entities follows. Six alternatives to the proposed moratorium were considered. These were: a 5-year moratorium instead of the proposed 3-year moratorium; status quo; a 50-percent income requirement

for renewal in lieu of a moratorium; for-hire species quotas; a 3- or 5-year moratorium in combination with species quotas; and a 3-year moratorium with mandatory expiration should the red snapper restrictions become more severe. Since the status quo alternative would not accomplish the Council's goals, among the remaining alternatives, including the proposed rule, the proposed rule was determined to produce the least impacts on small entities. The 5-year alternative would provide a more stable planning horizon for industry participants but extend the period during which capacity expansion and restrictions on new entry would be impacted. The 50 percent income requirement would result in contraction of existing participants beyond the intent of the Council, which is to stabilize rather than contract the fishery while a more comprehensive evaluation is conducted and management program is designed. Species quotas would subject the fishery to disruptive closures. Linkage to the red snapper management environment was determined to be indefensible and, therefore, would not allow implementation of the proposed rule and would forego the perceived benefits of stabilization. In summary, the proposed rule would best accomplish the Council's intent while minimizing impacts.

A summary of the analysis follows. The Magnuson-Stevens Act provides the statutory basis for the final rule. The objective of the final rule is to cap the number of for-hire vessels permitted to fish for reef fish or coastal migratory pelagics in the EEZ of the Gulf of Mexico at the current level while the Council assesses the actions necessary to restore overfished reef fish and king mackerel stocks and determine whether a more comprehensive effort management system is appropriate for these fisheries. The final rule will: create a new for-hire vessel permit for the Gulf EEZ for vessels fishing for reef fish and/or coastal migratory pelagics; establish a 3-year moratorium on the issuance of new for-hire vessel permits effective the date that the final rule implementing Amendments 14 and 20 becomes effective; establish eligibility requirements for the permits that would accommodate owners of vessels that possessed or had applied for charter/ headboat reef fish and/or coastal migratory pelagic permits on or before March 29, 2001, and who possess such permit(s) as of the effective date of the final rule implementing this moratorium, new for-hire vessels contracted for or under construction

prior to March 29, 2001, and historical captains; allow full transference of permits during the moratorium with or without the vessel but without any increase in the passenger capacity of the recipient vessel (permits with a historical captain endorsement may only be transferred to a vessel operated by the historical captain); not allow permit renewal during the moratorium for permits not renewed within 1 year of expiration; allow an appeal process to resolve issues related to initial eligibility; and, establish reporting and permit renewal conditions.

The creation of a for-hire permit and implementation of a 3-year moratorium for the issuance of new permits will provide some stability for the for-hire sector in terms of number of participating vessels while the need for a more comprehensive controlled access or effort management system is evaluated. The specific number of vessels accommodated by the rule is unknown since it is not known how many individuals will qualify and seek permits under the boat construction or historical captain provisions. The moratorium will also not produce a hard cap on effort in the form of angler trips since current vessels may be operating under less than full passenger capacity and will retain the flexibility to increase the frequency of partial-day trips. Nevertheless, this final rule will limit expansion to the capacity of current participants. This will allow identification and enumeration of vessels in these fisheries to support essential data collection and establish a more stable environment for assessing the status of the fishery in support of subsequent regulation.

This final rule will effectively allow status quo operation by current participants in the fishery who had such permits (or applied for such) at some time during March 29, 2000, to March 29, 2001, and who also have a valid permit on the date the final rule becomes effective. The eligibility provisions for new vessel construction and historical captains will further protect the opportunities of individuals who have demonstrated a dependence on the fishery through capital investment or historical participation. The only impediment to the status quo business practices of such initial qualifiers is the limitation on vessel passenger capacity upgrades under the current permit. Such upgrade will be possible, however, through the purchase of the appropriate permit from another vessel. The liberal provisions for permit transfer support business upgrade, allow the entrance of new operators or buyouts by more efficient operators, and

create a marketable asset that may enhance the value of the vessel and client lists should a participant decide to sell his/her business. The eligibility and transfer provisions are, thus, consistent with the intent to allow status quo participation while it is determined whether current effort levels are appropriate, rather than legislate reductions. The appeals process will afford valid participants the opportunity to address record discrepancies that adversely affect their eligibility. Finally, the renewal provisions support the fishery management process by aiding in the collection of essential harvest and participation information.

Business operations in the for-hire sector consist primarily, if not exclusively, of small business entities. For-hire vessel operations are considered small business entities if they generate receipts of less than \$6.0 million per year. The average gross revenues for charter boats operating in 1997 was \$83,000 for vessels in Alabama through Texas (based on average numbers of trips per vessel and average fee per trip) and \$68,000 for vessels in Florida, while the average gross revenues for head boats/party boats was \$328,000 in Alabama through Texas and \$324,000 in Florida. Current revenues may exceed those of 1997, but the revenue performance of the fishery clearly qualifies the participants to fit the definition of small business entities.

All for-hire vessels that fish for reef fish or coastal migratory pelagics in the Gulf of Mexico EEZ will be affected by this final rule. However, all of these vessels are currently required to possess the appropriate for-hire permits for the fisheries in which they participate. The only effective new permit implication of this final rule is to require vessels expecting to fish for coastal migratory pelagics in both the Gulf of Mexico and South Atlantic to obtain two permits, one for each subregion, instead of the current single permit which allows fishing in either subregion. This will require an additional \$20 application fee for the second permit. As of the control date of March 29, 2001, there were 2,226 permitted for-hire vessels, of which 1,737 had both reef fish and coastal migratory pelagic charter permits, 123 had only the reef fish charter permit, and 366 had only the coastal migratory pelagic charter permit. These totals are substantially greater than those at the previous control date of November 18, 1998, when there were only 940 permitted for-hire vessels, of which 723 had both permits, 58 had only the reef fish permit and 159 had only the coastal migratory pelagic permit. While total permit numbers

more than doubled during this time span, a potentially substantial portion of the increase is likely attributed to vessels that were previously operating in the fishery without the proper permits, since a frequent comment at public hearings was that operators were unaware of the current permit requirements. Thus, not all of the increase is believed to be due to either new participation or speculative purchase. It is not currently known how many vessels obtained their first for-hire permit after the cut-off date and would, therefore, not be eligible for the initial receipt of the permit. Nor is it known how many vessels might be expected to enter the fishery during the moratorium period in the absence of a moratorium. The large increase in permits suggests that a substantial number of vessels interested in participating in the fishery have already established qualification, and the liberal qualification and transfer provisions of this final rule should allow further entry by interested individuals, albeit at a larger cost due to the need to purchase a permit from a current operation. However, since all vessels in the fishery will be affected and all are considered small business entities, it is concluded that a significant number of small entities will be affected by this final rule.

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made in the final rule as a result of such comments.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: will the regulations place a substantial number of small business entities at a significant competitive disadvantage to large business entities? Although some variation exists between vessel operation type (guide boat, charter boat, and head/party boat), vessel length, and degree of participation in the fishery (number of trips per year), all vessels are classified as small business entities. Thus, the issue of disproportionality is not relevant in the present case.

The profitability question is: will the regulations significantly reduce profit for a substantial number of small entities? Two categories of operations will be affected by the final rule, qualifying vessels and non-qualifying vessels. Effects on qualifying vessels may accrue through the permit fee, the reporting requirement, and the limitation on passenger capacity expansion. While permit fees are \$50 for the first permit and \$20 each for any additional permit, all vessels are

currently required to possess a permit. Thus, permit costs should not be substantially affected, nor should they significantly affect profits. The reporting requirement impacts time expenses rather than actual monetary outlays and, therefore, do not directly affect profitability. The effects on profits of the limitation on passenger capacity expansion cannot be estimated because neither the cost of purchasing an existing permit, the expected rate of expansion (what portion of vessels might be expected to expand), or the expected average capacity expansion (i.e., what the average expansion will be from what starting passenger capacity to what final passenger capacity) can be forecast.

Effects on the profits of non-qualifying vessels will consist of the effects of not being allowed to continue participation in the fishery or the requirement that new entrants into the fishery purchase an existing permit. The effects on profits for these vessels are unknown since neither the price of the necessary permit nor the alternative operation options (what these vessels might do and what the profitability profile of this option is in lieu of participating in the for-hire fishery) for these vessels are known. The number of small entities this might entail is also unknown.

Copies of the FRFA are available upon request (see **ADDRESSES**).

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 Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This final rule contains five collection-of-information requirements subject to the Paperwork Reduction Act (PRA)--namely, a requirement to submit a charter vessel/headboat permit application, submission of information on vessel construction, submission of information on historical captain eligibility, submission of appeals of NMFS' initial denial of a charter vessel/headboat permit, and mandatory responses to NMFS' (voluntary) Marine Recreational Fishing Vessel Directory Telephone Survey (charter vessels only). The collection of this information has been approved by OMB under OMB control number 0648-0451 for the permit-related information collections and OMB control number 0648-0452 for the NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey. The public reporting burdens for these collections of information are estimated

to average 20 minutes, 2 hours, 2 hours, 5 hours, and 7 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. In addition, § 622.5(b)(1) of this rule revises slightly (i.e., revises the names of the applicable permits consistent with this rule) the requirement for charter vessel/headboat submission of a fishing trip record if selected by the Science and Research Director. The requirement applicable to headboats has been approved by OMB under control number 0648-0016 with an estimated time per response of 12 minutes. NMFS does not currently have PRA approval to select any charter vessels for this reporting and would obtain OMB clearance prior to making any selection. Send comments regarding these burden estimates or any other aspect of the collection of information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: June 24, 2002.

William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 622--FISHERIES OF THE CARIBBEAN, GULF, 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 § 622.4, paragraphs (a)(1) and (g) are revised and paragraph (r) is added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(1) *Charter vessel/headboat permits.*

(i) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess, in or from the EEZ, species in any of the following species groups, a valid charter vessel/headboat permit for that species group must have been issued to the vessel and must be on board—

(A) Gulf coastal migratory pelagic fish.

(B) South Atlantic coastal migratory pelagic fish.

(C) Gulf reef fish.

(D) South Atlantic snapper-grouper. (ii) See paragraph (r) of this section regarding a moratorium on Gulf charter vessel/headboat permits and the associated provisions.

(iii) See paragraph (r)(12) of this section for an explanation of the requirement for the new charter vessel/ headboat permit for South Atlantic coastal migratory pelagic fish and for procedures for initial application and issuance of that permit.

(iv) A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of "Charter vessel" and "Headboat" in § 622.2 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

* * * * *

(g) *Transfer.* A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in § 622.17(c) for a commercial vessel permit for golden crab, or in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper. A person who acquires a vessel who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. If the acquired vessel is currently permitted, the application must be accompanied by the original permit and a copy of the vessel's new USCG documentation or state registration.

* * * * *

(r) *Moratorium on charter vessel/ headboat permits for Gulf coastal migratory pelagic fish and Gulf reef fish.* The provisions of this paragraph (r) are applicable through July 29, 2005.

(1) *Applicability.* Beginning December 26, 2002, the only valid charter vessel/ headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish are those that have been issued under the moratorium criteria in this paragraph (r). No applications for additional charter vessel/headboat

permits for these fisheries will be accepted. Existing permits may be renewed, are subject to the transferability provisions in paragraph (r)(9), and are subject to the requirement for timely renewal in paragraph (r)(10) of this section.

(2) *Initial eligibility.* Initial eligibility for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following—

(i) An owner of a vessel that had a valid charter vessel/headboat permit for Gulf reef fish or coastal migratory pelagic fish, or whose application for such permit had been received by NMFS, at some time during the period March 29, 2000, through March 29, 2001, and who has such a valid permit on the effective date of the final rule that contains this paragraph (r)(2)(i).

(ii) Any person who can provide NMFS with documentation verifying that, prior to March 29, 2001, he/she had a charter vessel or headboat under construction and that the associated expenditures were at least \$5,000 as of that date. If the vessel owner was constructing the vessel, the vessel owner must provide NMFS with receipts for the required expenditures. If the vessel was being constructed by someone other than the owner, the owner must provide NMFS with a copy of the contract and/or receipts for the required expenditures.

(iii) A historical captain, defined for the purposes of paragraph (r) of this section as a person who provides NMFS with documentation verifying that—

(A) Prior to March 29, 2001, he/she was issued either a USCG Operator of Uninspected Passenger Vessel license (commonly referred to as a 6-pack license) or a USCG Masters license and operated, as a captain, a federally permitted charter vessel or headboat in the Gulf reef fish and/or coastal migratory pelagic fisheries that was not permitted in his/her name or the name of a corporation in which he/she was a shareholder; and

(B) At least 25 percent of his/her earned income was derived from charter vessel or headboat fishing in one of the years, 1997, 1998, 1999, or 2000.

(3) *Special conditions applicable to eligibility based on historical captain status.* A person whose eligibility is based on historical captain status will be issued a letter of eligibility by the RA. The letter of eligibility may be redeemed through the RA for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish, with a historical captain endorsement. The letter of eligibility is valid for the duration of the

moratorium; is valid only for a vessel of the same authorized passenger capacity as the vessel used to document earned income in paragraph (r)(2)(iii)(B) of this section; and is valid only for the fisheries certified on the application under paragraph (r)(2)(iii)(A) of this section. A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish with a historical captain endorsement is valid only on a vessel that the historical captain operates as a captain.

(4) *Determination of eligibility based on permit history.* NMFS' permit records are the sole basis for determining eligibility based on permit or application history. An owner of a currently permitted vessel who believes he/she meets the permit or application history criterion based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership. An owner will not be issued initial charter vessel/ headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish under the moratorium in excess of the number of federally permitted charter vessels and/or headboats that he/she owned simultaneously at some time during the period March 29, 2000 through March 29, 2001.

(5) *Application requirements and procedures—(i) General.* An applicant who desires a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish must submit an application for such permit to the RA postmarked or hand-delivered not later than October 28, 2002. Application forms are available from the RA. The information requested on the application form varies according to the eligibility criterion that the application is based upon as indicated in paragraphs (r)(5)(ii), (iii), and (iv) of this section; however, all applicants must provide a copy of the applicable, valid USCG Operator of Uninspected Passenger Vessel license or Masters license and valid USCG Certificate of Inspection. Failure to apply in a timely manner will preclude permit issuance even when the applicant meets the eligibility criteria for such permit.

(ii) *Application based on the prior permit/application history criterion.* On or about July 29, 2002 implementing this moratorium, the RA will mail an application for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish to each owner of a vessel who, according to NMFS' permit records, is eligible based on the permit or application history criterion in paragraph (r)(2)(i) of this section.

Information requested on the application is consistent with the standard information required in paragraph (b)(3)(ii) of this section. The RA will also mail each such owner a notice that his/her existing charter vessel/headboat permit(s) for coastal migratory pelagic fish and/or Gulf reef fish will expire December 26, 2002 and that the new permit(s) required under this moratorium will be required as of that date. A vessel owner who believes he/she qualifies for a charter vessel/ headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on permit or application history, but who does not receive an application from the RA, must request an application from the RA and provide documentation of eligibility. The RA will mail applications and notifications to vessel owner addresses as indicated in NMFS' permit records.

(iii) *Application based on a charter vessel/headboat under construction prior to March 29, 2001.* A person who intends to obtain a charter vessel/ headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on the vessel-under-construction eligibility criterion in paragraph (r)(2)(ii) of this section must obtain an application from the RA. Information requested on the application includes the standard information required in paragraph (b)(3)(ii) of this section and the documentation of construction and associated costs as specified in paragraph (r)(2)(ii) of this section.

(iv) *Application based on historical captain status.* A person who intends to obtain a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on historical captain status must obtain an application from the RA. Information requested on the application includes the standard information required in paragraph (b)(3)(ii) of this section and documentation of the criteria specified in paragraphs (r)(2)(iii)(A) and (B) of this section. Such documentation includes income tax records pertinent to verifying earned income; a copy of the applicable USCG license and/or Certificate of Inspection; and a notarized affidavit signed by a vessel owner certifying the period the applicant served as captain of a charter vessel or headboat permitted for Gulf reef fish and/or coastal migratory pelagic fish, whether the charter vessel or headboat was permitted for Gulf reef fish or coastal migratory pelagic fish or both, and whether the charter vessel or headboat was uninspected (i.e., 6-pack) or had a USCG Certificate of Inspection.

(v) *Incomplete applications.* If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 20 days of the date of the RA's notification, the application will be considered abandoned.

(6) *Issuance of initial permits.* If a complete application is submitted in a timely manner and the applicable eligibility requirements specified in paragraph (r)(2) of this section are met, the RA will issue a charter vessel/ headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish or a letter of eligibility for such fisheries, as appropriate, and mail it to the applicant not later than December 16, 2002.

(7) *Notification of ineligibility.* If the applicant does not meet the applicable eligibility requirements of paragraph (r)(2) of this section, the RA will notify the applicant, in writing, of such determination and the reasons for it not later than November 26, 2002.

(8) *Appeal process.* (i) An applicant may request an appeal of the RA's determination regarding initial permit eligibility, as specified in paragraph (r)(2) of this section, by submitting a written request for reconsideration to the RA with copies of the appropriate records for establishing eligibility. Such request must be postmarked or hand-delivered within 30 days after the date of the RA's notification of ineligibility and may include a request for an oral hearing. If an oral hearing is granted, the RA will notify the applicant of the place and date of the hearing and will provide the applicant a maximum of 30 days prior to the hearing to provide information in support of the appeal.

(ii) A request for an appeal constitutes the appellant's authorization under section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) for the RA to make available to the appellate officer(s) such confidential records as are pertinent to the appeal.

(iii) The RA may independently review the appeal or may appoint one or more appellate officers to review the appeal and make independent recommendations to the RA. The RA will make the final determination regarding granting or denying the appeal.

(iv) The RA and appellate officer(s) are empowered only to deliberate whether the eligibility criteria in paragraph (r)(2) of this section were applied correctly. Hardship or other factors will not be considered in determining eligibility.

(v) The RA will notify the applicant of the decision regarding the appeal within 30 days after receipt of the request for appeal or within 30 days after the conclusion of the oral hearing, if applicable. The RA's decision will constitute the final administrative action by NMFS.

(9) *Transfer of permits—(i) Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel from which the permit was transferred. The determination of authorized passenger capacity will be based on the USCG Certificate of Inspection or USCG Operator of Uninspected Passenger Vessel license associated with the vessels involved in the transfer. If no valid Certificate of Inspection is provided for a vessel, that vessel will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(ii) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a higher authorized passenger capacity than the vessel from which the permit was transferred, and is not otherwise transferable.

(iii) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the owner of a vessel that is to receive the transferred permit must complete the transfer information on the reverse side of the permit and return the permit and a completed application for transfer to the RA.

(10) *Renewal.* (i) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in one of the following—

(A) NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(B) NMFS' Southeast Headboat Survey (as required by § 622.5(b)(1) of this part);

(C) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(D) A data collection system that replaces one or more of the surveys in paragraph (r)(10)(i)(A)(B) or (C) of this section.

(ii) A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that is not renewed or that is revoked will not be reissued during the moratorium. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(11) *Requirement to display a vessel decal.* Upon issuance, renewal, or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for the applicable permitted fishery or fisheries. 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.

(12) *Requirement and procedure for obtaining an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish.* (i) *General.* This paragraph (r)(12) explains the necessity of requiring and the procedure for obtaining an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish. Formerly, the charter vessel/headboat permit for coastal migratory pelagic fish applied in the EEZ of the Gulf and South Atlantic. The establishment of a separate charter vessel/headboat permit for Gulf coastal migratory pelagic fish under the moratorium established by paragraph (r) of this section necessitates that a separate charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish also be established effective December 26, 2002 and that the former charter vessel/headboat permit for coastal migratory pelagic fish (applicable in both the Gulf and South Atlantic) be voided effective as of that same date. The newly required charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish is not subject to the provisions of the moratorium in paragraphs (r)(1) through (11) of this section.

(ii) *Application for and issuance of an initial charter vessel/headboat permit*

for South Atlantic coastal migratory pelagic fish—(A) Owner of a vessel with a valid charter vessel/headboat permit for coastal migratory pelagic fish. On or about June 28, 2002, the RA, based on NMFS' permit records, will mail an application for an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish to each owner of a vessel with a valid charter vessel/headboat permit for coastal migratory pelagic fish. Any such owner who desires an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish must submit the completed application to the RA. To avoid any lapse in authorization to fish for coastal migratory species in the South Atlantic EEZ (i.e., valid permit status), such owners must submit the completed application to the RA postmarked or hand-delivered not later than September 26, 2002. For completed applications received by that deadline, the RA will issue the permit no later than December 16, 2002. Applications will be accepted at any time, but if received after the deadline, the permit may not be issued prior to the date that the permit is first required (i.e., December 26, 2002). These special procedures apply only to the application and issuance of the initial permit; subsequent permitting activities will be conducted in accordance with the standard permitting procedures as specified in § 622.4(b) through (l).

(B) Owner or operator of a vessel without a valid charter vessel/headboat permit for coastal migratory pelagic fish. An owner or operator of a vessel who desires a charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish and who does not have a valid charter vessel/headboat permit for coastal migratory pelagic fish must obtain a permit application from the RA. For additional permitting procedures, see § 622.4(b) through (l) of this part.

3. Effective December 26, 2002, § 622.5(b)(1) is revised to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) *Coastal migratory pelagic fish, reef fish, and snapper-grouper.* The owner or

operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, or snapper-grouper in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

* * * * *

4. In § 622.7, paragraphs (b) and (f) are revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), (q), or (r) or in § 622.18.

* * * * *

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 622.6(a) and (b) or § 622.4(r)(11).

* * * * *

5. Effective December 26, 2002, § 622.43(a)(3)(ii) is revised to read as follows:

§ 622.43 Closures.

(a) * * *

(3) * * *

(ii) A person aboard a vessel for which valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish and a valid commercial vessel permit for king or Spanish mackerel have been issued may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

* * * * *

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