

will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584 of this chapter. Non-mutually exclusive applications for noncommercial educational broadcast stations, as described by 47 U.S.C. 397(6), will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.7004 and 73.3584 of this chapter. If the applicants are duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the non-mutually exclusive long-form application, the same will be granted.

\* \* \* \* \*

[FR Doc. 03-12057 Filed 5-14-03; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300, 600, and 679

[Docket No. 020801186 3073 02;  
I.D.053102D]

RIN 0648 AQ09

#### Pacific Halibut Fisheries; Subsistence Fishing; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the final rule that implemented the Pacific Halibut Subsistence Program, which published on April 15, 2003.

**DATES:** Effective on May 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, NMFS, 907-586-7228 or e-mail at [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

**SUPPLEMENTARY INFORMATION:** This document corrects the final rule, which published on April 15, 2003 (68 FR 18145) FR Doc. 03-8822, and which will become effective on May 15, 2003. The intext table entitled VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL of 50 CFR part 600.725(v) was incorrect. This action corrects the heading by removing "Allowable gear

types" and by adding in its place "Authorized gear types." This action will not have any substantive regulatory effect.

#### Classification

This action corrects a typographic error, a non-discretionary technical change with no substantive effects. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries (AA), NOAA, finds good cause to waive prior notice and comment procedures otherwise required by the section. NOAA finds that prior notice and comment are unnecessary as this final rule makes a minor, non-substantive change to correct wording in a heading of a table. NOAA finds that because of the technical, non-substantive nature of the correction, no particular public interest exists in this rule for which prior notice and comment would otherwise be needed. For the above reasons, the AA also finds good cause, under 5 U.S.C. 553(d) not to delay for 30 days the effective date of this action.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 8, 2003.

**Rebecca Lent,**

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

#### PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C 561, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 1801 *et seq.*

■ 2. On page 18161, bottom of second column, in § 600.725, paragraph (v), correct table VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL, by removing the second heading in the boxhead, "Allowable gear types", and adding in its place "Authorized gear types".

[FR Doc. 03-12040 Filed 5-14-03; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 030303053-3118-02; I.D. 022403C]

RIN 0648-AQ70

#### 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; Revision of Charter Vessel and Headboat Permit Moratorium Eligibility Criterion

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement a corrected Amendment for the charter vessel/headboat permit moratorium established in Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 14) and in Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20). This final rule revises, consistent with the actions taken by the Gulf of Mexico Fishery Management Council (Council), one of the eligibility criteria for obtaining a charter vessel/headboat permit under the moratorium. This final rule also reopens the application process for obtaining Gulf charter vessel/headboat moratorium permits and extends the applicable deadlines; extends the expiration dates of valid or renewable open access permits for these fisheries; clarifies, as requested by the Council, a constraint on issuance of historical captain permits under the moratorium; and extends the expiration date of the moratorium to account for the delay in implementation. 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 implement the charter vessel/headboat moratorium in the Gulf of Mexico consistent with the actions taken by the Council.

**DATES:** This final rule is effective June 16, 2003.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) may be obtained 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 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.

NMFS approved the corrected Amendment on May 6, 2003. NMFS published a proposed rule on March 12, 2003, to implement the corrected Amendment and requested comments on the proposed rule through March 27, 2003 (68 FR 11794, March 12, 2003). The rationale for the measures in the corrected Amendment was provided in the proposed rule and is not repeated here.

#### Comments and Responses

NMFS received a September 2002 minority report signed by two Council members, a November 2002 minority report signed by one Council member, and nine letters opposing aspects of the corrected amendment and/or the proposed rule. Twelve letters in support of the proposed rule were received. Neither minority report was filed specifically in response to the proposed rule or the corrected amendment, but both reports addressed prior Council requests that are related to the proposed rule. Therefore, responses to the minority reports are also provided here.

#### September 2002 Minority Report

A minority report was submitted by two Council members that contained objections to the Council's action at its September 2002 meeting regarding a letter to NMFS which modified a final Council motion adopted in March 2001. The September 2002 Council motion stated, "To write a letter to NMFS stating that it was the intent of the Council under C-1. Eligibility - to provide for fully transferable reef fish or coastal migratory pelagic charter/headboat permits to individuals/charter vessels who held valid permits on March 29, 2001, or who had applied for such permits received in NMFS' office by March 29, 2001. The intent of the Council was to cap the effort and passenger capacity of vessels as of March 29, 2001." Following are the minority report comments related to this action.

*Comment 1:* The action clearly violates the basic rules of statutory construction to the detriment of persons who have taken or may take actions based on the language of the original Council motion.

*Response:* In determining the scope of the measures proposed by the Council, NMFS promulgates appropriate regulations in light of the entire administrative record. The final rule is the result of a detailed review of such record, and the eligibility requirements are consistent with Council discussions on the issue. Further, NMFS is not construing a statute, but rather a motion made by a Council member, and the agency has a duty to examine the record developed by the Council in order to clarify ambiguities and resolve inconsistencies in the language used. The Council assisted in this endeavor by providing clarification of its intent.

*Comment 2:* Some remarks from the minutes of the '01 Mobile meeting contradict the newly construed meaning of the eligibility provisions of the Amendment as stated in the action contested herein. Therefore, the present action is not fully supported even on its merits.

*Response:* With the exception of the single eligibility criterion, which Council staff acknowledged was included in the amendment erroneously, and is being removed in this final rule, the record supports NMFS' current interpretation of the Mobile motion. The fact that some members held different views does not mean that the action is not supported by the record. Unanimous votes are fairly uncommon, and a majority of the Council concurred with the action.

*Comment 3:* Action taken at this meeting was not properly noticed to the affected public. Therefore, it will be a surprise move to affected parties, many of whom participated in the negotiations relating to passage of the original language, and many of whom can be substantially adversely impacted by this new move, clearly contrary to the principles of public notice contained in the M-S Act [sic] (Magnuson-Stevens Act) and other applicable law.

*Response:* The published agenda indicated that on Tuesday, September 10, 2002, the Mackerel Management Committee would hear a "Status Report on the Charter Vessel/Headboat Moratorium Amendment." NMFS presented this status report, which included a discussion of the fact that one of the eligibility requirements included in the amendment prepared by staff was not supported elsewhere in the administrative record. The Council agreed that NMFS' review was correct and that such criterion was in error. As a result, the Council voted to acknowledge in writing to the Secretary, its concurrence with this determination, along with another suggested clarification which is not part of this final rule. No new action was taken by the Council at the September 2002 meeting for which further public notice was required. Those members of the public who had participated throughout the process were aware of the inclusion of the erroneous criterion in the final rule, and first indicated the possibility of error to NMFS just prior to the effective date of the final rule.

*Comment 4:* Five Council members who participated in the original vote in Mobile were not at this Metairie meeting to tell what they thought or knew of the original adopted language.

*Response:* It is true that the membership of the Council had changed, and all new members abstained from discussing the issue and voting on the letter to the Secretary.

*Comment 5:* The original action in Mobile was taken as a joint effort of the Reef Fish and Coastal Migratory Pelagic Fisheries Committees. The charterboat moratorium affects both fisheries. The present action at the Metairie meeting seeking to modify the results of the joint effort passed through only the Reef Fish Committee, and did not pass through a joint committee, nor was the joint committee convened for this purpose.

*Response:* See the response to comment 3 as to the "action" taken by the Council. The only committee to hear the update at the September 2002 meeting was the Coastal Migratory Pelagic committee, but the topic was

addressed at length during full Council session; hence, all persons who would have comprised a joint committee had an opportunity to participate in the full Council session.

*Comment 6:* The Council members and the public did not have, before taking this action, any alternatives, impacts, scoping or other facts and documents required by the National Environmental Policy Act (NEPA) and M-S [sic].

*Response:* See the response to comment 3 as to the "action" taken by the Council. When "action" was taken on this amendment in March 2001, the Council had before it all the pertinent materials and was fully compliant with the applicable laws in its consideration and approval of the amendment.

*Comment 7:* Since the present action will affect a fishery jointly shared with the South Atlantic Council, the action, as was the original action, must be passed through the South Atlantic Council for approval.

*Response:* See the response to comment 3 as to the "action" taken by the Council. Given that there was no "action" taken on the amendment itself, only a confirmation of an error in the document, which in no way pertained to the South Atlantic Council's area of jurisdiction, there was no need for the South Atlantic Council to approve it again.

*Comment 8:* Allowing this to happen sets a bad precedent as to the ability of the fishing industry to rely on anything the Council or NMFS does. It should be viewed as an action by the Council at the request of NMFS that will seriously erode confidence in the system.

*Response:* The provisions in this final rule reflect what was discussed at the meetings and what is contained in the record, rather than the erroneous eligibility criterion which appeared in the document after Council approval. Maintaining erroneous regulations, which differ from those discussed at public meetings, would not promote public confidence in NMFS or the Council.

#### *November 2002 Minority Report*

A minority report was submitted by one Council member that contained objections to the Council's action at its November 2002 meeting regarding a letter requesting that the Secretary of Commerce implement via emergency action a provision that again amends two fishery management plans without going through the plan amendment process. The Council's November 2002 motion stated "To write a letter to the Secretary of Commerce to implement via emergency action the language of the

motion adopted by the Council at its September 9–12, 2002, meeting amended as follows: "It was the intent of the Council that under C-1 - to provide for fully transferable reef fish or coastal migratory pelagic charter/headboat permits to individuals/charter vessels who held valid permits on March 29, 2001, or held a valid permit during the preceding year or had applied for such permits received in the NMFS office by March 29, 2001. The intent of the Council was to cap the effort and passenger capacity of vessels as of March 29, 2001." Following are the minority report comments related to this action.

*Comment 9:* This action was taken without any notice to the public or to the affected classes of vessel owners.

*Response:* The only action taken at the November 2002 meeting was that the Council requested NMFS to implement via emergency rule a moratorium containing the eligibility requirements supported by the record. While no notice was included in the published agenda, section 302(i)(2)(C) of the Magnuson-Stevens Act expressly excludes from the prior public notice requirement modifications to the published agenda addressing emergency actions. As the Magnuson-Stevens Act requires, notice of the perceived emergency and need for action was given immediately at the meeting.

*Comment 10:* The actions by NMFS in publishing the regulations and by the Council at both meetings since the Mobile meeting would result in regulations that implement something more restrictive than the Council Plan Amendment Motion establishing the moratorium.

*Response:* NMFS actions in promulgating this final rule will implement the moratorium supported by the administrative record as developed at the March 2001 Council meeting in Mobile, Alabama. This final rule will actually be less restrictive than the prior final rule which contained an erroneous eligibility criterion. The erroneous eligibility criterion was a requirement to hold a valid permit on the effective date of the final rule. Contrary to the assertions contained in the minority report, the correction would slightly increase, rather than decrease, the number of participants compared to the erroneous regulation.

*Comment 11:* The requirements relative to emergency action are not met by the content of the eligibility measures; only by the pending termination of existing permits.

*Response:* NMFS is not implementing the moratorium with the corrected criteria via emergency rule. The agency

did exactly as this comment advocates in using an emergency rule to prevent the potential economic disruption of the charter industry upon implementation of the previous final rule which contained the erroneous criterion.

*Comment 12:* No scientific justification or information was given upon which to base the Council's actions (contrary to national standard 2 and other applicable laws).

*Response:* The original decision to implement a moratorium was based on the best available scientific information regarding the status of certain overfished species in the Gulf, which were subject to considerable increasing pressure by the expanding charter fleet in the region. No new management measures subject to national standard 2 have been proposed by NMFS or the Council with regard to the charter permit moratorium. Also, see the following response regarding the change to the eligibility requirements from the March 2001 Mobile motion.

*Comment 13:* Changing the eligibility provisions without following the Plan Amendment process will be a serious insult to the M-S [sic] Act Council Conservation and Management process.

*Response:* NMFS has not changed the eligibility provisions from those approved by the Council at the March 2001 meeting in Mobile, Alabama. As the record clearly indicates, this final rule merely removes a single eligibility criterion that was erroneously included in the amendment and thereby incorporated in the prior regulations. As to the suggestion that the motion from the March 2001 Mobile meeting made eligible all persons who had ever held a permit for either fishery, this claim is simply not supported by the record. The maker of the motion for the Reef Fish Management Committee stated that the intent of the moratorium criteria was to cap effort (hence the number of eligible vessels) at 2001 levels. Allowing all persons who ever held such a permit for either fishery regardless of the lack of recent participation is clearly inconsistent with the concept of capping effort at 2001 levels.

*Comment 14:* NMFS was (and would be) acting outside its authority in publishing implementing regulations changing the eligibility requirements of the Council's Plan Amendment motion.

*Response:* See the response to the previous comment.

*Comment 15:* NEPA was not followed at the Mobile meeting, and that let the eligibility requirements of the implementing regulations differ from the Motion establishing the permit moratorium system.

*Response:* The duty to satisfy NEPA rests with NMFS and it was complied with through the Council's preparation of an Environmental Assessment and a finding of no significant impact (FONSI) considering the proposed action, a reasonable range of alternatives, and the potential impacts of such measures on the human environment.

#### *Other Public Comments*

*Comment 16:* Eight 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 17:* There has been no discussion of the impact or profitability of restricting vessel eligibility so that vessels having a valid permit at any time from 1987 (when permits were first issued) through 3/29/00, but not since, would not be eligible for a moratorium permit.

*Response:* The economic analysis for the amendment looked at the impact of the moratorium on new entrants to the fishery, which for present purposes includes this class of individuals. Prior participants, who no longer participated in the fishery, would be affected in the identical manner as people who had never participated and now wanted to enter the fishery.

*Comment 18:* In addition to restating previous comments made in the minority reports, and on subsequent rules, one individual objected to the amendment, specifically the manner in which permit eligibility is established.

*Response:* As stated in the response to comment 1, NMFS must promulgate regulations in light of the administrative record as a whole, which supports the approach taken in the final rule. The purpose of the moratorium was to cap current effort, while allowing historical participants to continue in the fishery, and the final rule providing eligibility to owners of vessels who held permits during the qualifying period does just this. Owners (or historical captains as the case may be) are eligible for permits based on participation with some vessel in the respective fishery during the qualifying time period. The Council has clearly expressed its intent on this issue, and in light of the administrative record as a whole, the approach suggested in these comments would conflict with the

Council's stated intent and the objective of the amendment.

#### **Change From the Proposed Rule**

In § 622.4(r)(3), the third sentence is revised to indicate that the letter of eligibility for an historical captain is valid only for a vessel of the same or lesser authorized passenger capacity as the vessel used to document earned income for eligibility purposes. The proposed rule language required that the passenger capacity be the same as the vessel used to document earned income (i.e., would not be valid for a vessel with lesser passenger capacity). This change from the proposed rule is consistent with the Council's intent to cap fishing effort (not to discourage or preclude reduction in fishing effort); makes the rule language regarding this eligibility and transferability provision consistent; and avoids unnecessary administrative procedures (i.e., issuance and an otherwise unnecessary transfer to a vessel of lesser capacity).

#### **Classification**

The Administrator, Southeast Region, NMFS, determined that the corrected Amendment is necessary for the conservation and management of the Gulf reef fish and coastal migratory pelagics fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA for this final rule pursuant to § 604 of the Regulatory Flexibility Act. A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. Under a rule promulgated on June 28, 2002 (67 FR 43558), all for-hire operators in the reef fish and/or coastal migratory pelagic fisheries in the Gulf of Mexico exclusive economic zone (EEZ) were required to have a valid limited access moratorium permit beginning December 26, 2002. The objective of that rule was 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. Subsequent to publication of the rule, it was determined that the amendment did not correctly reflect the actions approved by the Council, resulting in the unintentional exclusion of 935 historical participants in the fishery. As

an interim measure prior to correcting this error via normal rulemaking, NMFS promulgated an emergency rule that extended several dates associated with the moratorium to allow those participants erroneously excluded from qualifying for a moratorium permit to continue participation in the fishery, pending completion of the normal rulemaking process. The primary objective of this final rule is, therefore, to correct the error associated with the eligibility criterion for the for-hire moratorium permit. This final rule will revise, consistent with the Council's clarification of intent, one of the eligibility criteria for obtaining a Gulf charter vessel/headboat moratorium permit to remove a restrictive provision requiring that a valid permit was held on July 29, 2002. Complementary logistical adjustments, e.g., reopening the application process, extension of deadlines, etc., are also included.

The qualification requirements for the initial issuance of the moratorium permit will mandate the provision of information necessary to establish qualification for the permit, such as information on income, record of past participation in the fishery, and proof of the time a vessel was under construction. Permit renewal will require that permitted vessels participate in the standard data collection programs implemented in the region which will require that information be maintained on standard vessel operation information, such as trips, passenger loads, catch success, etc. All information elements required for these actions are standard elements essential to the successful operation of the business and should already be collected and maintained as standard operating practice by the business. These requirements do not require professional skills, and, therefore, may be deemed not to be onerous on the affected participants.

Two categories of impacted entities are presumed, those that qualify for the for-hire permit and those that do not. Those who qualify for permits fall under two groups; those who qualify based on permit records and those who qualify based on the provisions for historical captains or vessel-under-construction. Based on permit records, an estimated 3,071 permitted for-hire vessels would qualify for the moratorium permit, of which 1,917 would qualify for both reef fish and coastal migratory pelagic permits, 974 would qualify for only the coastal migratory pelagic permit, and 180 would qualify for only the reef fish permit. In addition to these vessels, an indeterminate number of entities would qualify for the initial issuance of the for-

hire moratorium permit under the historical captain or vessel-under-construction criteria. In total, the two groups would constitute the universe of qualified entities. A precise estimate of this universe cannot be provided as, although it can be presumed that all active permits will be maintained to allow either sale of the permit or continued use, it cannot be determined how many entities will qualify under the historical captain or vessel-under-construction criteria. Of the 3,071 qualifying vessels, 2,136 vessels qualify under the status quo moratorium program, of which 1,373 vessels qualify for both permits, 99 vessels qualify for only the reef fish permit, and 664 vessels qualify for only the coastal migratory pelagic for-hire permit. This final rule will, therefore, allow the qualification of an additional 935 vessels, of which 544 vessels will qualify for both permits, 81 vessels will qualify for the reef fish permit, and 310 vessels will qualify for the coastal migratory pelagic permit. These 935 vessels represent approximately 30 percent of the historic fleet. It should be noted that all 3,071 vessels, including the 935 vessels that would additionally qualify as a result of the final rule, are all historical participants in the fishery. This condition is reflective of the Council's intent to stabilize participation at historical levels.

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 not in excess of \$6.0 million per year. The average gross revenues for charter boats operating in 1997 was \$83,000 for vessels operating in Alabama, Mississippi, Louisiana, and 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 from vessels operating in Alabama to 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. Since all entities operating in the fishery as well as the 935 new qualifiers will be affected by the final rule, the criterion of a substantial number of the small business entities being affected by the rule will be met.

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. However, the time expenses are estimated at \$13 for charterboat participants (5.5 interviews x 7 minutes per interview x \$20 per hour) and \$700 for headboat participants (140 logbooks per headboat x 15 minutes per logbook x \$20 per hour). 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 their passenger capacity), or the expected average capacity expansion can be forecast.

Additionally, the 935 vessels that were previously erroneously excluded from qualification for the moratorium permit, and that would now be qualified under the final rule, will be allowed to continue their historic participation and accompanying profit performance and in addition will experience a substantial increase in profitability over what would occur under the status quo since they would have been precluded from continued participation under the June 28, 2002 rule. Since this is an increase in profit and not a decrease, significant reductions in profit are not expected to occur.

Effects on non-qualifying vessels would consist of the effects on business profits of not being allowed to continue participation in the fishery or enter the fishery without purchasing an existing

permit. The effects on profits of these vessels is unknown since neither the price of the necessary permit nor the alternative business options (what they 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. It is also not possible to estimate the number of small entities this would affect, primarily because it can not be determined how many small business entities would seek to enter the fishery in the absence of the moratorium.

This final rule will allow qualification for the moratorium permit and continued operation of 935 vessels, or approximately 30 percent of the historic participants, in addition to the 2,136 vessels qualified under the status quo moratorium program, plus an unknown number of qualifiers under the historic captain and boat-under-construction provisions. Continued participation by these 935 vessels will allow the avoidance of a significant loss in performance and profits of these small business entities and the fishery as a whole. It is, therefore, concluded that the final rule will result in a significant beneficial economic impact on a substantial number of small entities (i.e., the 935 vessels).

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

Ten alternatives to the initial eligibility requirements were considered. These were: allowing all persons who held a for-hire permit on the date of implementation of the amendment; allowing all persons who held a for-hire permit on either September 16, 1999 or November 11, 1999; using a control date of November 18, 1998 and allowing for continuous participation under permit, vessel replacement by current permitted participant and issuance of new permit, purchase of permitted vessel, or purchase of a new vessel and issuance of a new permit; establishment and eligibility requirements for a Class 1 (fully transferable) species endorsements; establishment and eligibility requirements for a Class 2 (non-transferable) species endorsements; historical captain permit/endorsement provisions (2 alternatives); boat-under-construction provisions (2 alternatives); and allowing all persons who held a for-hire permit on or before January 1, 2002. Since the intent of the Council is to accommodate actual participation existent at the time of amendment development and the perception was strong that many active

participants did not possess the required permits, control dates more restrictive than the proposed control date would increase the negative impacts on the fishery through the exclusion of active participants, contrary to the intent of the Council. More liberal control dates, however, while reducing the potential universe of excluded vessels, would also be contrary to the Council's intent of stabilizing participation at the level existent at the time of amendment development. The transferability provisions could result in contraction of the fleet, contrary to the intent of stabilization and would increase the negative impacts on the fishery. The alternative historical captain provisions would have increased the burden of eligibility and increased the negative impacts. The alternative provisions for boats under construction are more restrictive than those of the final rule because it would have been harder to qualify for a permit. This would have increased the negative impacts on the fishery because more permit holders would have been excluded. In summary, this final rule accomplishes the Council's intent while minimizing impacts.

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

This final rule contains two collection-of-information requirements subject to the Paperwork Reduction Act (PRA)—namely a requirement to submit a charter vessel/headboat permit application and submission of appeals of NMFS' initial denial of a charter vessel/headboat permit—that have been approved by OMB under control number 0648–0205. The public reporting burdens for these collections of information are estimated to average 20 minutes for a permit application, an additional 2 hours for additional documentation for an application based on a vessel being under construction or on historical captain status, and 5 hours for an appeal. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS and OMB (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 PRA unless that

collection of information displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 622

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

Dated: May 9, 2003.

**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, the suspensions of the first sentence of paragraph (r)(1), the first sentence of paragraph (r)(6), and paragraph (r)(8)(v) are lifted; and paragraph (r) is revised to read as follows:

#### § 622.4 Permits and fees.

\* \* \* \* \*

(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 June 16, 2006. Notwithstanding the other provisions of this paragraph (r), the expiration dates of all charter vessel/headboat permits for Gulf reef fish or Gulf coastal migratory pelagic fish that were not issued under the provision of this paragraph (r) and that were valid or renewable as of December 17, 2002, will be extended through November 13, 2003, provided that a permit has not been issued under this paragraph (r) for the applicable vessel.

(1) *Applicability.* Beginning November 13, 2003, 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) of this section, 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 on March 29, 2001, or held such a permit during the preceding year or whose application for such permit had been received by NMFS, by March 29, 2001, and was being processed or awaiting processing.

(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; operated, as a captain, a federally permitted charter vessel or headboat in the Gulf reef fish and/or coastal migratory pelagic fisheries; but does not have a fishery permit issued in their name; 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 or lesser 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 September 15, 2003. 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), (r)(5)(iii), and (r)(5)(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 June 16, 2003, 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 November 13, 2003, 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 November 3, 2003.

(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 October 14, 2003.

(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 45 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 45 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 45 days after receipt of the request for appeal or within 45 days after the conclusion of the oral hearing, if applicable. The RA's decision will constitute the final administrative action by NMFS.

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