

commercially important species would be measured. Species that do not meet minimum size requirements would be returned to the sea immediately following scientific processing. Experimental fishing operations would take place from approximately April 1 through September 30, 2003. A final report containing the results of the study would be provided to NMFS no later than 6 months following completion of the study.

A portion of the experimental fishing area proposed in this EFP is in the GOM RMA. However, the majority of the experiment area is on GB, and all vessels participating in the proposed experimental fishery would be required to abide by existing trip limits for GB cod and haddock for the duration of this experiment. Current regulations restrict vessels fishing on GB to landing no more than 2,000 lb (907.2 kg) of cod per days-at-sea (DAS), up to a maximum of 20,000 lb (9,071.8 kg) per trip. Because each vessel is expected to utilize 5 sea days, these vessels would be limited to landing a maximum of 2,000 -10,000 lb (907.2 - 4,536 kg) of cod per trip. Vessels would also be restricted to landing no more than 30,000 lb (13,608 kg) of haddock per trip from May through September, and 50,000 lb (22,680 kg) of haddock per trip, from October through April. In addition, vessels would be subject to the haddock trip limit, by day or by trip, as required by the regulations, should a daily haddock trip limit or overall trip limit be in effect for the commercial fishery (i.e., at the start of the May 1, 2003, fishing year, and if a daily limit is imposed prior to the end of the fishing year in order to prevent the haddock TAC from being exceeded).

EFPs would be issued to four vessels, exempting them from the specific minimum mesh size requirements restrictions and seasonal GOM Rolling Closure Area II and III of the FMP.

Based on the results of the EFP, this action may lead to future rulemaking.

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

Dated: March 6, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 03-5903 Filed 3-11-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 030303053-3053-01; 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:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to revise, 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 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 Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20). This proposed rule would also reopen the application process for obtaining Gulf charter vessel/headboat moratorium permits and extend the applicable deadlines; extend the expiration dates of valid or renewable open access permits for these fisheries; clarify, as requested by the Gulf of Mexico Fishery Management Council (Council), a constraint on issuance of historical captain permits under the moratorium; and extend the expiration date of the moratorium to account for the delay in implementation. The intended effect of this proposed rule is to implement the charter vessel/headboat moratorium in the Gulf of Mexico consistent with the actions taken by the Council.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on March 27, 2003.

**ADDRESSES:** Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-

5583. Comments will not be accepted if submitted via e-mail or Internet. Copies of documents supporting this proposed rule, which include an environmental assessment, a regulatory impact review (RIR), and an initial Regulatory Flexibility Act analysis (IRFA) and copies of two minority reports opposing the revision of the eligibility criterion and the procedural approach for implementation are available from the same address.

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.

#### Background

The Council, in cooperation with the Gulf charter vessel/headboat industry, developed Amendments 14 and 20 to address issues of increased fishing mortality and fishing effort in the for-hire sector of the recreational fishery in the Gulf of Mexico. These amendments require charter vessels and headboats operating in the fisheries for Gulf reef fish or Gulf coastal pelagic fish to obtain a moratorium permit and also establish a 3-year moratorium on issuance of additional permits for these for-hire fisheries. NMFS approved Amendments 14 and 20 and promulgated the charter vessel/headboat moratorium regulations (67 FR 43558, June 28, 2002) to implement the amendments. However, after a recent review of the administrative record, the Council and

NMFS determined that the amendments contained an error relating to the permit eligibility criteria and, therefore, did not correctly reflect the action taken by the Council. Thus, the regulations implementing the amendments also contained this error, and not all persons who should have been entitled to receive charter vessel/headboat permits under the moratorium approved by the Council would be able to receive permits under the erroneous amendments and regulations. The Council, at its September and November 2002 meetings, provided further clarification of Council intent regarding the eligibility criteria that resulted in corrected Amendments 14 and 20 (corrected Amendments) and requested that NMFS implement the necessary revisions.

On December 17, 2002, NMFS issued an emergency rule (67 FR 77193), that deferred the date that the "moratorium permit" is required; automatically extended the expiration date of valid or renewable "open access" permits for these fisheries; and extended the deadlines for issuance of "moratorium permits" and for resolution of appeals. These actions allow those applicants who otherwise would have been denied, inappropriately, initial access to the fisheries to continue participating in these fisheries, pending resolution of the error. In addition, those applicants who qualified under the existing regulations will be issued "moratorium permits" as soon as possible.

#### **Revisions Contained in This Proposed Rule**

This proposed rule would: (1) Revise, consistent with the Council's clarification of intent, one of the eligibility criteria for obtaining a Gulf charter vessel/headboat moratorium permit; (2) reopen the moratorium permit application process with appropriate extension of associated deadlines for application, issuance, appeals, etc.; (3) further extend, automatically, the expiration dates of valid or renewable "open access" permits for these fisheries until such time that moratorium permits would be required under a final rule implementing the corrected Amendments; (4) clarify, consistent with the Council's intent, a constraint on issuance of moratorium permits under the historical captain provision; and (5) extend the expiration date of the moratorium, consistent with the Council's intent, to account for the unanticipated delay in its implementation.

#### *Revision of Eligibility Criterion*

One of the three eligibility criteria for obtaining a Gulf charter vessel/headboat moratorium permit, as contained in Amendments 14 and 20 and their implementing regulations, was subsequently determined to be inconsistent with the Council's intent. The incorrect criterion was worded as follows: "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)." Based upon the Council's clarifications at its September and November 2002 meetings, the criterion is proposed to be reworded to read as follows: "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." The proposed revision removes the requirement to have had a valid permit on the effective date of the final rule that implemented Amendments 14 and 20 (i.e., on July 29, 2002) and, therefore, would be less restrictive.

#### *Reopening of the Moratorium Permit Application Process*

Because of the error in the eligibility criterion, NMFS is proposing to reopen the application process for Gulf charter vessel/headboat moratorium permits. The procedures for application, documentation of eligibility, permit issuance, and appeals are the same as the procedures in the existing regulations, except for the revision to the eligibility criterion described above and necessary reestablishment of applicable deadlines. The complete text of these procedures is provided in § 622.4(r)(1) through (r)(8) of this proposed rule and is not repeated here. Although this reopening would apply to all applicants, those applicants who previously applied under the existing regulations and were advised by NMFS that they were eligible or have already been issued a moratorium permit, need not, and should not, reapply.

#### *Automatic Extension of Expiration Date of Valid Open Access Permits*

This proposed rule would extend, automatically, the expiration dates of

valid or renewable "open access" charter vessel/headboat permits for these fisheries until such time that moratorium permits would be required under a final rule implementing the corrected Amendments. This will allow those applicants who would be ineligible for a moratorium permit under the existing regulations, due to the error in the eligibility criterion, to participate in these fisheries while the error is addressed through the normal rulemaking initiated by this proposed rule.

#### *Clarification Regarding Historical Captain Moratorium Permits*

NMFS determined that it needed to clarify that a historical captain moratorium permit would not be issued to a person who has a fishery permit issued in his/her name. Section 622.4(r)(2)(iii)(A) of this proposed rule has been revised to reflect that intent.

#### *Extension of the Expiration Date of the Moratorium*

The Council intended that the moratorium remain in effect for 3 years from the date of effectiveness of the final rule implementing the moratorium, i.e., through July 29, 2005. Because of the recently discovered error in the eligibility criterion and subsequent need to reopen the moratorium permit application process, final implementation of the moratorium would be substantially delayed. Therefore, this proposed rule would extend the expiration date of the moratorium through a date that would be 3 years from the effective date of the final rule that would implement the moratorium as revised by the corrected Amendments.

#### **Minority Report**

Two Council minority reports contained objections to the proposed revision of the eligibility criterion and to the procedural approach for implementing the revision -the September 2002 report was signed by two Council members; the December 2002 report was signed by one Council member. Copies of the minority reports are available from NMFS (see **ADDRESSES**).

#### **Classification**

At this time, NMFS has not determined whether the corrected Amendments that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the

comment period on the corrected Amendments.

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

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. This proposed rule would not duplicate any other requirements. A summary of the analysis follows.

NMFS prepared an IRFA and concluded that this proposed rule, if adopted, would have a significant economic impact on a substantial number of small business entities. A summary of the IRFA 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 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. 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 while the current proposed rule is prepared. The primary objective of the proposed rule is, therefore, to correct the error associated with the eligibility criterion for the for-hire moratorium permit. The proposed rule would 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.

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

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. The proposed action would, therefore, allow the qualification of an additional 935 vessels, of which 544 vessels would qualify for both permits, 81 vessels would qualify for the reef fish permit, and 310 vessels would 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 proposed 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 \$5.0 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 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. Since all entities operating in the fishery as well as the 935 new qualifiers will be affected by the proposed rule, the criterion of a substantial number of the small business entities being affected by the proposed 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 proposed action, 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.

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.

The proposed rule would 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 proposed rule would result in a significant economic impact on a substantial number of small entities.

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 proposed rule because they would have made it more difficult for fishermen 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, the proposed rule accomplishes the Council's intent while minimizing impacts.

Copies of the IRFA and RIR are available upon request (see ADDRESSES).

This proposed 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 0648–0451. The public reporting burdens for these collections of information are estimated to average 20 minutes and 5 hours 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. 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: March 6, 2003.

**Rebecca Lent,**

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

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

#### **PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.4, the suspensions of the first sentence of paragraph (r)(1), the first sentence of paragraph (r)(6), and paragraph (r)(8)(v) are lifted; paragraph (r)(8)(vi) is removed; and paragraph (r) introductory text, paragraphs (r)(1) through (r)(8) are 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 the date that is three years after the effective date of the final rule implementing the corrected Amendments. 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 the date that is 150 days after the effective date of the final rule implementing the corrected Amendments provided that a permit has not been issued under this paragraph (r) for the applicable vessel.

(1) *Applicability.* Beginning 150 days after the effective date of the final rule implementing the corrected Amendments, 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 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 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 90 days after the effective date of the final rule implementing the corrected Amendments. 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 the effective date of the final rule implementing the corrected Amendments, 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 150 days after the effective date of the final rule implementing the corrected Amendments 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 140 days after the effective date of the final rule implementing the corrected Amendments.

(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 120 days after the effective date of the final rule implementing the corrected Amendments.

(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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