

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