

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.