

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-