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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200115-0018]

RIN 0648-BI12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; Historical Captain Permits Conversions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures as described in an abbreviated framework action to the Fishery Management Plans (FMPs) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). This proposed rule would modify the Federal regulations for historical captain permits in the reef fish and CMP fisheries in the Gulf of

Mexico (Gulf) Exclusive Economic Zone (EEZ), to provide an opportunity for eligible historical captain permit holders to replace their permits with standard Federal charter vessel/headboat permits. It is expected that the rule would reduce the regulatory and economic burden on historical captain permit holders. In addition, NMFS proposes a correction to the regulations regarding commercial king mackerel permit requirements from an inadvertent error in the final rule for Amendment 20A to the FMP for the CMP Resources in the Gulf of Mexico and Atlantic Region.

DATES: Written comments must be received on or before February 22, 2020.

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2019-0081" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0081, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St.

Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Electronic copies of the Framework Amendment may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/framework-action-replacement-historical-captain-permits-standard-federal-charter-headboat*. The abbreviated framework includes a Regulatory Flexibility Act (RFA) analysis and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Gulf Council manage reef fish resources in the Gulf EEZ under the Reef Fish FMP. The CMP fishery in the Gulf of Mexico and Atlantic regions is managed jointly by the Gulf Council and South Atlantic Fishery Management Council (Councils).

The Gulf Council prepared the Reef Fish FMP and the Councils jointly prepared the CMP FMP. NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*).

Background

During the 1980s and 1990s, the number of charter and headboat (for-hire) vessels operating in the recreational Gulf reef fish and CMP fisheries increased rapidly, creating concern among the Gulf Council, NMFS, and other members of the industry about the viability of the industry and the sustainability of the fish stocks they were harvesting. The Gulf Council was also concerned about the rapid increase in the number of reef fish and CMP for-hire permits and trips, and the increased proportion of the catch harvested by the for-hire fleet.

In response to these concerns, the Gulf Council developed Amendment 14 to the CMP FMP and Amendment 20 to the Reef Fish FMP (CMP Amendment 14/Reef Fish Amendment 20) that, when implemented by NMFS, established a 3-year moratorium on the issuance of new charter vessel/headboat permits in the reef fish and CMP fisheries in the Gulf EEZ (67 FR 43558, June 28, 2002). The purpose of the moratorium was to cap the number of for-hire permitted vessels while the Gulf Council evaluated the need for further management actions to rebuild fishery resources. A fully transferable reef fish or CMP charter vessel/headboat permit, hereafter referred to as a standard permit, was issued to eligible for-hire operators, which included those individuals who (1) owned a vessel with a valid charter vessel/headboat permit, or (2) could demonstrate that, prior to March 29, 2001, they had a charter vessel or headboat under construction, with associated expenditures of at least \$5,000.

The Gulf Council recognized that some captains participating in the for-hire reef fish and CMP fisheries operated other individuals' vessels and did not own their vessels, and therefore were not eligible for a standard

permit. Under CMP Amendment 14/Reef Fish Amendment 20, these captains were eligible to apply for a permit with a historical captain endorsement, referred to hereafter as a historical captain permit. Eligibility requirements for the historical captain permit included demonstrating a captain was licensed and operated a federally permitted for-hire vessel in the Gulf reef fish or CMP fisheries before March 29, 2001, and that at least 25 percent of their earned income came from for-hire fishing in at least one of the following years: 1997, 1998, 1999, or 2000.

Unlike a standard permit, a historical captain permit is attached to the individual instead of a specific vessel and has certain restrictions. A historical captain permit requires the captain to be on the vessel when operating a for-hire trip, and a historical captain permit cannot be transferred or sold.

Persons who submitted evidence of eligibility as a historical captain within 90 days of the implementation of the CMP Amendment 14/Reef Fish Amendment 20 were issued letters of eligibility, which could be used to obtain a historical captain permit. Initially a total of 141 historical captain permits for reef fish and CMP

charter/headboat vessels were issued by the NMFS Southeast Fisheries Permits Office.

In 2006, NMFS implemented Reef Fish Amendment 25/CMP Amendment 17 (71 FR 28282, May 16, 2006), which established a limited access program for permitting for-hire vessels for the reef fish and CMP fisheries in the Gulf EEZ, effectively extending the permit moratorium indefinitely. The historical captain permit continued to be a category of permit following implementation of Reef Fish Amendment 25/CMP Amendment 17, and previously issued letters of eligibility remained valid, as did the historical captain permits, providing permit procedures for retention and renewal were followed.

In January 2018, the Gulf Council began development of an action to allow historical captain permit holders to convert existing reef fish and CMP historical captain permits to standard charter vessel/headboat permits, after hearing public testimony about the economic hardships caused by the restrictions imposed on historical captain permits. Converting a historical captain permit would allow the permit holder to lease the vessel to another captain or have another captain operate the vessel. Additionally,

unlike a historical captain permit, a standard permit is fully transferrable in accordance with 50 CFR 622.20(b)(1)(i), which provides the opportunity to transfer the permit to a family member or any other eligible person, and provides greater flexibility in permit ownership to the holder. For example, a fully transferable standard permit allows the family of a permitted captain who has died to retain the permit, unlike a historical captain permit, which expires upon the captain's death. In contrast to the historical captain permit, being able to transfer the standard permit to another entity provides the permit holder an opportunity to sell or trade the permit.

At their October 2018 meeting, the Gulf Council determined that only the individuals who had a valid (non-expired) or renewable historical captain permit as of October 25, 2018, would be eligible to convert that permit to a standard permit. As of that date, 32 captains held a valid (non-expired) or renewable historical captain permit; all but one have both a reef fish and a CMP historical captain permit, and the remaining captain has a CMP historical captain permit only. This framework action by the Gulf Council is limited to those 32 individuals,

because the Council's intent is to provide additional flexibility to fishermen who have relied on the historical captain permit for their livelihood.

Each permit provides a maximum number of passengers allowed on board a vessel operating under the permit. While listed on the permit as the "Permit Maximum Passenger Capacity," this number is commonly referred to as the "passenger capacity." The Gulf Council decided that a standard for-hire permit issued as a result of this framework action would have the same passenger capacity as the historical captain permit that it would replace. For instance, 27 of the 32 for-hire vessels operated with historical captain permits as of October 25, 2018, have a passenger capacity of 6 people. Therefore, when converted to standard permits, vessels operating under these permits would each retain the same 6-person passenger capacity on for-hire trips in the EEZ.

Some of the letters of eligibility sent to historical captains in 2003 have not been redeemed and are still valid. The Gulf Council determined that previously issued eligibility letters for historical captains will be invalid as of the effective date of any final rule to implement the

framework action in this proposed rule. If an individual redeems an outstanding letter of eligibility for a historical captain permit before any effective date of the final rule, they could receive a historical captain permit, but they would not be eligible for conversion of that historical captain permit into standard for-hire permit at that time.

Management Measures Contained in This Proposed Rule

This proposed rule would extend the same rights and responsibilities of standard Gulf reef fish and CMP charter vessel/headboat permits to eligible individuals who choose to convert their historical captain permits to standard permits.

If an individual who holds an eligible (non-expired) or renewable historical captain permit as of October 25, 2018, and wishes to retain a historical captain permit, the individual would renew the permit as done in previous years. This would include filling out all sections of the permit application specifically related to the historical captain permit renewal process and providing the appropriate supporting documents and fees to the NMFS Southeast Fisheries Permits Office.

If an individual with an eligible historical captain permit wishes to convert the permit to a standard reef fish or CMP charter vessel/headboat permit, the individual would submit a permit application to the NMFS Southeast Fisheries Permits Office along with their current historical captain permit (original document, not a copy) and supporting documents and fees, including documentation for the vessel to which the standard for-hire permit would be attached. Unlike a historical captain permit, which is issued to an individual, a standard permit must be issued to a vessel with a valid U.S. Coast Guard (USCG) certificate of documentation (COD) or state registration certificate (50 CFR 622.4(a)). If the permit applicant is the owner of the vessel, NMFS Southeast Fisheries Permits Office staff would verify that the vessel for which the new for-hire permit would be issued is owned by the applicant and does not have an existing Gulf reef fish or CMP charter vessel/headboat permit associated with it, as vessels are not allowed to have multiple charter vessel/headboat permits of the same type associated with them.

If the vessel to which the permit would be attached is to be leased, a fully executed lease agreement of at least

7 months, between the vessel owner and permit holder, would need to be included with the application. Note that vessel owners and lessees cannot independently hold permits for the same vessel at the same time. NMFS Southeast Fisheries Permits Office staff would then verify the vessel does not have any other Federal permit(s) associated with it in another permit holder's name.

Once the NMFS Southeast Fisheries Permits Office verifies that the information provided with the application allows for the conversion, the historical captain permit would be converted to a standard reef fish or CMP charter vessel/headboat permit. Due to the uniqueness of the historical captain permit number, the new permit would keep the existing permit number (e.g., HRCG-9999 would convert to RCG-9999).

Any application to convert from a historical captain permit to a standard permit must be submitted to NMFS within 2 years of the effective date of a final rule to implement this framework amendment. Any application submitted more than 2 years after the effective date of a final rule would not be accepted by NMFS, and the individual would instead retain their historical captain

permit.

Additional Proposed Changes to Codified Text Not in the Framework Action

In June 2014, NMFS published the final rule for Amendment 20A to the CMP FMP in the **Federal Register** (79 FR 34246, June 16, 2014). Amendment 20A removed the income qualification requirements for Spanish and king mackerel in the Gulf and Atlantic and restricted the sale of these species caught under the recreational bag limit. However, a regulation regarding the transfer requirements of limited access commercial vessel permits for king mackerel (50 CFR 622.371(b)), was inadvertently removed. As a result, current regulations unnecessarily restrict the transfer of Gulf commercial king mackerel permits to another vessel owned by the same entity. NMFS has only recently become aware of this error. Therefore, this proposed rule would correct this error by adding the following sentence to regulations at 50 CFR 622.371(b): "A permit holder may also transfer the commercial vessel permit for king mackerel to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel."

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework action, the respective FMPs, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is expected to be an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule, if implemented, would apply to all for-hire vessels that had a reef fish or CMP historical captain permit at the time that the Gulf Council considered this action in October 2018. As of October 25, 2018, there were 32 historical captains that had either a valid (non-expired) or renewable Gulf reef fish or CMP charter vessel/headboat historical captain permit. Of these 32 vessels, all but one had both a reef fish and a CMP historical captain permit; the remaining vessel had a CMP historical captain permit only. Although the application for a charter vessel/headboat permit collects information on the primary method of vessel operation, the permit itself does not identify the permitted vessel as either a charter vessel or a headboat, and vessels may operate in both capacities. The average charter vessel operating in the Gulf is estimated to receive approximately \$86,000 (2017 dollars) in gross revenue and \$25,000 in net income (gross revenue minus variable and fixed costs) annually. The average headboat is estimated to receive approximately \$261,000 (2017 dollars) in gross revenue and \$76,000 in net income annually.

Additionally, some of the letters of eligibility sent

to historical captains in 2003, have not been redeemed by individuals but are still valid. As of May 17, 2019, there were an estimated 65 historical captains that could still redeem their letters of eligibility, and thus, up to 65 additional for-hire businesses that may be affected by this proposed rule.

The SBA has established size standards for all major industry sectors in the U.S. including for-hire businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.5 million for all its affiliated operations worldwide. All of the for-hire fishing businesses that would be directly regulated by this proposed rule are believed to be small entities based on the SBA size criteria. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would not establish any new reporting or record-keeping requirements. It would, however, require historical captain permit holders to

comply with the permit regulations for standard charter vessel/headboat permits if their historical captain permits are converted to standard permits. The applicable permit regulations state that the standard permit must be issued to a vessel with a valid USCG COD or state registration certificate (50 CFR 622.4(a)). For any historical captain permit holder who elects to have their historical captain permit replaced with a standard permit and who does not currently own or lease a vessel, this would require either the purchase or lease of a vessel and payment of applicable registration and inspection fees.

This proposed rule would allow 32 historical captain permit holders the opportunity to replace their historical captain permits with standard permits. Because standard permits are transferrable and salable, and historical captain permits are not, this proposed rule would have positive economic effects in terms of increased asset value and business succession planning. Transfer values for a single standard permit ranged from \$0.01 to \$130,000 during 2007 through 2018. It is not possible to estimate a meaningful average market value for these permits with available data; however, it is expected that the value

would increase relative to the passenger capacity of the permit. Additionally, once historical captain permits are replaced with standard permits, the respective historical captains would no longer need to be present on the vessel while the permit is in use. This would provide greater operational flexibility and potentially increase profits for affected small entities.

There are also some potential economic costs to small entities from this proposed rule. Because replacement of historical captain permits with standard permits would be optional, only those permit holders who choose to participate in the conversion would be affected. Standard permits must be issued to a vessel that is either owned or leased by the permit holder. Historical captains that already own or lease a suitable vessel would be able to attach their new standard permit to that vessel and continue operating as normal, but with the added benefits described earlier. Some historical captains, however, may not currently own or lease a vessel. In order to replace their existing permits with standard permits, these historical captains would need to purchase or lease a suitable vessel and pay all applicable inspection and

registration fees. To obtain an initial USCG COD costs \$133 and an USCG COD renewal costs \$26 (46 CFR 67.550). If a USCG certificate of inspection is required, the annual inspection fee is \$300 for vessels less than 65 feet (19.812 meters) and \$600 for vessels 65 feet (19.812 meters) and greater (46 CFR 2.10-101(a)). State boat registration and inspection fees in Gulf states are estimated to range from approximately \$10 up to \$400, depending on the length of the vessel and state of vessel registration. As a result of uncertainty about the business strategies of historical captain permit holders, variation in permit passenger capacities, and the wide range of vessel options, it is not possible to estimate the cost that would be incurred by historical captains to purchase or lease a vessel. The average purchase price for a headboat operating in the Gulf is estimated to be \$388,627 (2017 dollars); the average purchase price for a charter vessel operating in the Gulf is estimated to be \$104,248. If historical captains intend to only sell their new standard permits, they could use a much cheaper vessel to hold the permit prior to the sale. Estimates of for-hire vessel lease prices are not readily available; however,

this may be a more affordable option than purchasing a vessel.

In addition to the potential cost to buy or lease a vessel, there would be an opportunity cost for some historical captains should they choose to replace their historical captain permits with standard permits. This opportunity cost pertains to the potential lost earnings that would result from no longer being able to use their historical captain permit to operate a vessel owned or leased by another individual or business. This opportunity cost cannot be quantified with available data. In order to extract value from the standard permit, historical captains would need to either sell their permit or attach it to a vessel that they own or lease. This vessel must also be capable and sufficient for servicing paying customers. Again, replacement of historical captain permits is voluntary and it is expected that historical captains would only replace their historical captain permits with standard permits if the benefits of doing so outweigh the costs. Finally, this proposed rule would render any remaining letters of eligibility for historical captain permits invalid upon implementation of these regulations.

Individuals that submit outstanding letters of eligibility prior to the implementation date of this rule would be issued a historical captain permit, but it would remain a historical captain permit only and would not be eligible for conversion to a standard permit. It is assumed that historical captains who have not yet submitted their letters of eligibility do not intend to operate a for-hire fishing vessel with a historical captain permit and therefore would not be affected by this proposed rule. If, for whatever reason, there are some historical captains that were waiting to submit their letters, it is assumed they would apply for a historical captain permit prior to the implementation of this rule.

An item contained in this proposed rule that is not part of the proposed framework action is the addition of the following sentence to 50 CFR 622.371(b): "A permit holder may also transfer the commercial vessel permit for king mackerel to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel." This provision was inadvertently removed in the final rule implementing Amendment 20A to the CMP FMP (79 FR 34246, June 16, 2014). However, NMFS has continued

to allow the transfer of a commercial king mackerel permit to the owner of another vessel or to a new vessel owner since Amendment 20A was implemented. Therefore, this is an administrative change only and is not expected to have any direct economic effects on any small entities. As such, this component of the proposed rule is outside the scope of the RFA.

The information provided above supports a determination that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

Because no new reporting or record-keeping requirements are introduced by this proposed rule, the Paperwork Reduction Act does not apply to this proposed rule.

List of Subjects in 50 CFR Part 622

Fish, Fisheries, Gulf, Historical Captain, Permits, Transfer.

Dated: January 15, 2020.

Samuel D. Rauch III,
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 OF MEXICO,
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 § 622.20, revise paragraph (b)(1) introductory
text and add paragraph (b)(1)(v) to read as follows:

§ 622.20 Permits and endorsements.

* * * * *

(b) * * *

(1) *Limited access system for charter vessel/headboat permits for Gulf reef fish.* No applications for additional charter vessel/headboat permits for Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (b)(1)(i) of this section, and are subject to the renewal requirements in paragraph (b)(1)(ii) of this section. An eligible charter vessel/headboat permit with a historical captain endorsement may be converted to a charter vessel/headboat permit without a historical captain endorsement, per procedures at paragraph (b)(1)(v) of this section.

* * * * *

(v) *Procedure for conversion of permit with historical captain endorsement.* A charter vessel headboat permit with a historical captain endorsement valid or renewable on October 25, 2018, may be converted to a charter vessel/headboat permit for Gulf reef fish without a historical captain endorsement. A charter vessel/headboat permit with a historical captain endorsement that is converted to a charter vessel/headboat permit without a historical captain endorsement will retain the same vessel permit maximum passenger capacity as the permit it

replaces. To convert an eligible charter vessel/headboat permit with a historical captain endorsement, the permit holder must submit an permit application to the RA by [DATE 25 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE]. If no application to convert an eligible charter vessel/headboat permit with a historical captain endorsement is submitted by [DATE 25 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the permit holder will retain a charter vessel/headboat permit with the historical captain endorsement that is subject to the restrictions described in paragraph (b) (1) (i) (B) of this section.

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3. In § 622.371, revise paragraph (b) to read as follows:

§ 622.371 Limited access system for commercial vessel permits for king mackerel.

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(b) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this limited access system to another vessel owned by the same entity. A permit holder may also transfer the commercial vessel permit for king mackerel to the owner of

another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel.

* * * * *

4. In § 622.373, revise paragraph (a) and add paragraph (f) to read as follows:

§ 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

(a) No applications for additional charter vessel/headboat permits for Gulf coastal migratory pelagic fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (b) of this section, and are subject to the renewal requirements in paragraph (c) of this section. An eligible charter vessel/headboat permit with a historical captain endorsement may be converted to a charter vessel/headboat permit without a historical captain endorsement, per procedures at paragraph (f) of this section.

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(f) *Procedure for conversion of permit with historical captain endorsement.* A charter vessel headboat permit with a historical captain endorsement valid or renewable on October 25, 2018, may be converted to a charter

vessel/headboat permit for Gulf coastal migratory pelagic fish without a historical captain endorsement as described in § 622.373(b) (1). A charter vessel/headboat permit with a historical captain endorsement that is converted to a charter vessel/headboat permit without a historical captain endorsement will retain the same vessel permit maximum passenger capacity as the permit it replaces. To convert an eligible charter vessel/headboat permit with a historical captain endorsement, the permit holder must submit a permit application to the RA by [DATE 25 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE]. If no application to convert an eligible charter vessel/headboat permit with a historical captain endorsement is submitted by [DATE 25 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the permit holder will retain a charter vessel/headboat permit with the historical captain endorsement that is subject to the restrictions described in § 622.373(b) (2).

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