



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200408-0106]

RIN 0648-BI12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Historical Captain Permits Conversions

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures as described in an abbreviated framework action to the Fishery Management Plans (FMPs) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (CMP FMP). This final rule enables eligible permit holders to replace historical captain endorsements in the reef fish and CMP fisheries in the Gulf of Mexico (Gulf) with standard Federal charter vessel/headboat permits to reduce the regulatory and economic burden on historical captains. In addition, NMFS is correcting an inadvertent error in the final rule for Amendment 20A to

the CMP FMP regarding commercial king mackerel permit requirements.

DATES: This final rule is effective on [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of the abbreviated framework document that contains an environmental assessment and a Regulatory Flexibility Act (RFA) analysis 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>.

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

SUPPLEMENTARY INFORMATION: NMFS and the Gulf of Mexico Fishery Management Council (Gulf Council) manage reef fish in Gulf Federal waters under the Reef Fish FMP. The CMP fishery in Gulf and Atlantic Federal waters 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.*).

On January 23, 2020, NMFS published a proposed rule in the **Federal Register** for the abbreviated framework action and requested public comment (85 FR 3885, January 23, 2020). The proposed rule and the abbreviated framework action outline the rationale for the action contained in this final rule. A summary of the management measure described in the abbreviated framework action and implemented by this final rule is provided below.

Management Measure Contained in this Final Rule

This final rule enables a permit holder with an eligible historical captain endorsement to convert that endorsement to a standard Federal Gulf reef fish or Gulf CMP charter vessel/headboat permit, as applicable, and extends the same rights and responsibilities of these standard for-hire permits to eligible individuals who choose to convert their historical captain permits to standard permits. An eligible historical captain endorsement, referred to hereafter as a historical captain permit, is one that was valid, non-expired, or renewable as of October 25, 2018, the qualifying date determined by the Gulf Council.

If an individual who held an eligible historical captain permit wishes to retain a historical captain permit, the individual can renew the permit as done in previous years. This will 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 Region 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 must submit a permit application to NMFS 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 will 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 Permits Office staff will verify that the vessel for which the new for-hire permit will 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 will be attached is to be leased, a fully executed lease agreement of at least 7 months, between the vessel owner and permit holder, will 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 Permits Office staff will then verify the vessel does not have any other Federal permit(s) associated with it in another permit holder's name.

Once NMFS verifies that the information provided with the application allows for the conversion, the historical captain permit will then be converted to a standard reef fish or CMP charter vessel/headboat permit. Historical captain permit numbers are unique, and the new permit will keep the existing permit number (e.g., HRCG-9999 will convert to RCG-9999). A standard for-hire permit issued as a result of this final rule will have the same passenger capacity limitation as the historical captain permit that it will replace.

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 this final rule. Any application submitted more than 2 years after the effective date of this final rule will not be accepted by NMFS, and the individual will instead retain their historical captain permit. In addition, if an individual redeems an outstanding letter of eligibility for a historical captain permit before the effective date of this final rule, they will receive a historical captain permit, but they will not be eligible to convert that historical captain permit into a standard for-hire permit. Any letters of eligibility not redeemed will no longer be valid as of the effective date of this final rule.

Comments and Responses

NMFS received seven comments on the proposed rule for the abbreviated framework action. All of the comments that addressed the actions considered by the Gulf Council and included in the proposed rule were supportive of having the conversion. However, one comment disagreed with some aspects of the proposal. This comment is summarized below, followed by NMFS' response. NMFS made no changes to the final rule resulting from public comments.

Comment 1: All historical captain permits that are active as of the effective date of this final rule should

be converted to standard permits, including those permits obtained after the October 2018 Gulf Council meeting.

Response: NMFS disagrees. Some individuals expressed an interest in maintaining the historical captain permit. Therefore, the Gulf Council decided to allow individuals to choose whether to convert their historical captain permit to a standard for-hire permit or retain their historical captain permit.

The Council also determined that it was appropriate to limit this choice to individuals who have relied on the historical captain's permit for their livelihood and may be negatively impacted by the permit's restrictions. Therefore, the Council decided that only the 32 CMP historical captain permits and 31 Gulf reef fish historical captain permits that were valid (non-expired) or renewable when the Council considered this action in October 2018 are eligible for replacement with corresponding standard charter vessel/headboat permits. NMFS agrees that this is appropriate because those individuals have shown reliance on, and an interest in remaining in, the fishery by obtaining and renewing their permits.

**Changes to Codified Text not in the Abbreviated 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, in the final rule for Amendment 20A, 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.

Changes From the Proposed Rule

In the proposed rule, the regulatory text in paragraphs 622.20(b)(1)(v) and 622.373(f) stated that the deadline for the permit holder to submit a permit application to the NMFS Regional Administrator (RA) to convert an eligible charter vessel/headboat permit with a historical captain endorsement would be "25 months after the effective date" of the final rule (85 FR 3885, January 23, 2020). That text should have stated that the deadline is "25 months after the date of publication" of the final rule, which is 2 years (24 months) after the effective

date. This was correctly stated in the preamble to the proposed rule and is consistent with the Gulf Council's intent.

Classification

The RA for the NMFS Southeast Region determined that this final rule is consistent with the abbreviated framework action, the FMPs, the Magnuson-Stevens Act, and other applicable laws.

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

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the

proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fish, Fisheries, Gulf of Mexico, Historical captain, Permits, Transfer.

Dated: April 8, 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 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 the procedure in 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 that was 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 a permit application to the RA by May 23, 2022. If no application to convert an eligible charter vessel/headboat permit with a historical captain endorsement is submitted by *[insert date 25 months after the date of publication in the FEDERAL REGISTER]*, 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.

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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) *General.* 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 that was 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 paragraph (b) (1) of this section. 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 May 23, 2022. If no application to convert an eligible charter vessel/headboat permit with a historical captain endorsement is submitted by May 23, 2022, 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) (2) of this section.

[FR Doc. 2020-07762 Filed: 4/20/2020 8:45 am; Publication Date: 4/21/2020]