

Proposed Rules

Federal Register

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600[Docket No. 071001548-7827-02]

RIN 0648-AW10

Marine Recreational Fisheries of the United States; National Saltwater Angler Registry Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement section 401(g) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulations would establish a national registry of recreational fishers fishing in the Exclusive Economic Zone (EEZ), for anadromous species throughout their range or for Continental Shelf fishery resources beyond the EEZ. It also would exempt persons from that requirement if licensed by a state that provides registration data determined to be sufficient for the agency's needs. The requirement is intended to improve existing angling effort surveys in order to improve their efficiency, to reduce possible sources of bias and to improve confidence in survey results by anglers and fishery managers.

DATES: Comments must be received by [insert date 60 days after date of publication in the Federal Register]

ADDRESSES: You may submit comments, identified by RIN 0648-AW10, by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: 301-713-1875, Attn: Gordon Colvin.

• Mail: John Boreman, Director, Office of Science and Technology, NMFS, 1315 East West Highway, Silver Spring, MD 20910, Attn: Gordon Colvin.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gordon Colvin, phone: 301-713-2367; fax: 301-713-1875; or e-mail: gordon.colvin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at http://www.access.gpo.gov/su_docs/. Background information and documents are available at the NMFS Office of Science and Technology Web site at <http://www.st.nmfs.noaa.gov/mrii/index.html>.

Background

In 2004, NMFS contracted with the National Research Council (NRC) of the National Academy of Sciences to review the current marine recreational fishery survey methods used by NMFS and its partners to monitor fishing effort and catch. NMFS asked the NRC to: (1) assess current survey methods for their suitability in monitoring fishing effort and catch in the shoreline, private boat, and for-hire boat recreational fisheries; (2) assess the adequacy of the methods for providing the quality of information needed to support accurate stock assessments and responsible fisheries management decisions; and (3) make recommendations for possible methodological improvements that would ensure more accurate and precise estimates of recreational effort and catch.

The NRC's Ocean Studies Board formed a 10-member committee to conduct the requested review, held a

series of five public meetings in 2005 to gather information about the current survey programs in each region, and published a final report in April 2006 [<http://fermat.nap.edu/catalog/11616.html>]. The NRC report identified a number of potential problems with the sampling and estimation designs employed in the current surveys and questioned the adequacy of the existing surveys in providing the statistics needed to support accurate stock assessments and appropriate fishery management decisions. The report recommended that current surveys be redesigned to improve their effectiveness, the appropriateness of their sampling procedures, their applicability to various kinds of management decisions, and their usefulness for social and economic analyses. The NRC review deferred to NMFS to develop a process to determine the highest priority changes given the costs and benefits of any specific improvement.

NMFS is proposing the National Saltwater Angler Registry Program ("Registry Program") to implement the recommendations of the NRC review. Among its findings, the NRC review found that current recreational survey approaches, which rely on random telephone contacts with residents of coastal county households to collect marine recreational fishing effort data, result in significant survey over-coverage since relatively few households include active anglers, and under-coverage since some anglers do not live in coastal counties or they live in coastal counties but do not have landline telephones. The review advised that over-coverage results in severe sampling inefficiency, and that under-coverage may lead to serious bias in the resultant effort estimates since anglers from non-coastal counties are likely to have different effort characteristics than those from coastal counties. To resolve these problems, the NRC Panel recommended the development of and subsequent sampling from a comprehensive national saltwater angler registry. The panel further recommended that the registry be established either by implementing a federal registration requirement or by expanding current state saltwater licenses to include all saltwater anglers. Partially in response to the NRC Panel's findings and recommendations,

Congress passed section 401(g) of the MSA, which requires the Secretary of Commerce to establish a program to improve the quality and accuracy of current estimates of marine recreational fishing catch and effort by January 1, 2009, in a manner that considers and, to the extent feasible, incorporates the NRC Panel's recommendations. As part of the program, section 401(g)(1) of the MSA requires the Secretary to register, and collect identification and contact information for, anglers and for-hire vessels if they fish in the EEZ, for Continental Shelf fishery resources beyond the EEZ or for anadromous species throughout their range, including state waters. Further, the Secretary is to exempt from the federal registration requirement those anglers and vessels that are licensed or registered by a state if the state provides sufficient identification and contact information for use in recreational surveys. The resultant federal Registry must address both the qualifications and procedures for registering anglers and vessels and for exempting qualified states' anglers and vessels from the federal registration requirement.

The program must also recognize and balance two important provisions of the NRC recommendations and the provisions of section 401(g) of the MSA. First, the NRC Panel's scientific advice is clear that a universal registry or license-based list of all saltwater anglers, without exceptions based on exemptions to state or federal registration requirements, is essential. Second, the federal registration requirements of section 401(g) of the MSA apply to saltwater anglers fishing in state waters (territorial sea or internal waters) when they are taking anadromous fish. Therefore, some salt water anglers fishing in state waters would not be required to register under this section, although they may be subject to permitting and other requirements under other sections of the MSA. Accordingly, it is necessary for states and NMFS to work in collaboration to build registries of saltwater anglers that include anglers currently exempted or not covered by state license or registration requirements and that also include anglers who are fishing for non-anadromous marine fish in state waters.

The proposed rule was developed consistent with the foregoing program requirements. It is intended to facilitate the development of a national registry or data base of identification and contact information for marine recreational anglers and for-hire fishing vessels. The registry data will be compiled in a series of regional directories to be used to

support surveys of anglers and vessel operators to determine their angling effort and related data, as recommended by the NRC Panel and as required by section 401(g)(1) of the MSA.

The proposed rule would require persons who are angling or spear fishing or in possession of fish or operating a vessel that carries recreational fishing passengers for-hire in the EEZ, or who are angling or spear fishing or operating a vessel that carries recreational fishing passengers for-hire and who are in possession of anadromous species, to register annually with NMFS. The registration requirement would become effective January 1, 2009. Section 401(g) of the MSA provides that the Secretary may not charge a fee for anglers or vessels to register with NMFS until January 1, 2011. The proposed rule would implement a registration fee to be specified at the time of implementation, currently estimated to be in the range of \$15 to \$25 per year, beginning in calendar year 2011.

Anglers and for-hire vessel operators would be exempt from the requirement to register annually if they held a license issued by, or were registered by, a state which had qualified as an exempted state as described below. Persons who hold a state or federal commercial fishing license or permit, and who are lawfully fishing or in possession of fish pursuant to such license or permit, would not be required to register; however, holders of commercial licenses or permits who are angling or spear fishing recreationally, outside the terms and conditions of the commercial license or permit, would be required to register. Anglers under the age of 16 would be exempt from the mandatory registration requirement, although they could register voluntarily, at no cost. This exception is proposed, in part, due to the practical difficulty of conducting telephone surveys of, and of enforcing a registration requirement for, minors. Furthermore, in most cases, adult anglers reside in households in which minor anglers reside; such adults would need to register and, if contacted by surveys, would be able to provide the angling effort information for minors residing in the same household. Anglers fishing on registered for-hire fishing vessels also would be exempt from the registration requirement.

The fee for registering would be waived for non-commercial fishing by indigenous people, but the requirement to register would not. The proposed fee waiver recognizes that, for many indigenous people, fishing is motivated primarily by a desire to gather food for family or community use and/or for cultural reasons. Although it is

necessary to require indigenous fishers to register in order to assure that the registration requirement is enforceable and to ensure complete data collection, it is appropriate to waive the registration fee in consideration of the cultural nature of non-commercial fishing by many indigenous people.

The proposed rule also would establish the procedures and guidelines by which states may be designated as exempted states. A state would apply for designation by submitting a proposal that addresses the requirements as noted below. A Memorandum of Agreement ("MOA") between NMFS and each state would be executed to establish the terms of designation. States would be eligible to be designated as exempted states in two ways: (1) by submitting state angler and for-hire vessel license holder data to NMFS for inclusion in a national or regional registry data base; or (2) by participating in regional surveys of recreational catch and effort and making the resultant data available to NMFS. The proposed regulations for exempted state designation are designed to assure that the license holder data submitted by states includes all anglers and for-hire vessels necessary to meet survey requirements.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* At this time, NMFS has preliminarily determined that the proposed rule is consistent with the applicable provisions of the Magnuson-Stevens Act and other applicable law.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public burden for complying with the registration requirement is estimated to average two minutes per individual annual registration and three minutes for each for-hire vessel annual registration. Based on the current estimate of the initial number of potential registrants (see RIR/RFAA discussion below), the analysis estimates the total burden hours for compliance with registration requirements as 67,410 for individuals and 120 for small entities. The associated total labor costs are \$1,685,250 for individuals (\$0.83 per person) and \$3000 for small entities (\$ 1.25 per for-hire vessel). The PRA submission also states that, apart from the labor cost associated with submitting the information required to register, there are no other annual

reporting and recordkeeping costs associated with the registration requirement.

An individual registrant would provide name, address, telephone number and regions of the country in which they fish. A for-hire vessel registrant would provide owner and operator (if different) name, address, telephone number, vessel name and state registration or U.S. Coast Guard documentation number, and home port or principal operating area.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of NMFS, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility and clarity of information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Gordon Colvin, Office of Science and Technology (see ADDRESSES), and by e-mail to David_Rostker@omb.eop.gov or by fax to (202) 395-7285.

NMFS has determined that implementation of the rule is categorically excluded from the requirement for a NEPA review. The proposed action constitutes a regulation of an administrative and procedural nature and will not result in direct or indirect changes to the human environment.

The Office of Management and Budget has determined the proposed rule to be significant for purposes of Executive Order 12866 ("E.O. 12866").

The Regulatory Flexibility Act ("RFA") requires the examination of impacts of proposed and existing rules on small businesses, small organizations, and small governmental jurisdictions. In reviewing the potential impacts of proposed regulations, the agency must either: (1) certify that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities; or (2) prepare an Initial Regulatory Flexibility Analysis. The Small Business Administration ("SBA") defines a small business engaged in recreational fishing activities as a firm with receipts (gross revenues) of up to \$6.5 million.

The objectives and legal basis of this rule can be found in the SUMMARY and SUPPLEMENTARY sections of the proposed rule. There are no reporting or recordkeeping requirements associated with the rule. There are no disproportionate impacts among the

impacted universe of vessels or between small and large vessels as defined by the Small Business Administration.

The small entities affected by the proposed rule are fishing vessels that carry passengers for a fee to conduct recreational fishing. These "for-hire" fishing vessels are classified as follows:

Head boats include fishing boats on which fishing space and privileges are provided for a fee. Head boats are generally large, they may carry from 7 passengers up to 150 paying passengers, and anglers usually pay on a per-head basis for the opportunity to fish on them. The vessel is operated by a licensed captain (guide or skipper) and crew. In some areas of the country head boats are called party boats or open boats. These boats are usually not launched until a specified number of anglers have paid and boarded. Anglers on these full or half day trips usually do not know all of the other anglers on the boat. Head boats usually engage predominantly in bottom fishing. The length of head boat trips may vary from a half-day to multiple days.

Charter boats include fishing boats operating under charter for a specific price, time, etc. Charter boats are smaller in size than head boats, they usually carry fewer than 7 paying passengers, and they are usually hired, or "chartered", by a group of anglers. They are operated by a licensed captain and crew, and the participants are usually part of a pre-formed group. Thus, charters are usually closed parties (all anglers know each other), as opposed to the open status of party boats. A subset of charter boats are also called guide boats, which are small boats fishing inland waters with two to three clients. Charter boats can engage in a full range of fishing techniques, including trolling, bottom fishing, and drift fishing. The length of charter boat trips may vary from a half-day to multiple days.

11,953 for-hire vessels are currently operating nationwide. A detailed description of the number of vessels currently operating, by state of operation, is presented in section 2.2 of the RIR/RFAA.

The small entities that will be required to comply with the rule will be required to register annually by submitting the following information via either a web-based or telephone-based portal: vessel name and home port/principal operating area; vessel's state registration or USCG documentation number; name, address and telephone contact information for owner and operator(s). The registrant will be provided with a registration number and documentation of

registration which must be kept available to provide to law enforcement officers upon request. The proposed rule will not include any other reporting or record-keeping requirements.

All for-hire vessels, both head boats and charter boats, will be required to register annually unless they are exempted from the registration requirement under either of two exemption provisions in the proposed rule: (1) the vessel is licensed or registered by an Exempted State, or (2) the vessel holds a NMFS license or permit to engage in for-hire fishing activities in compliance with another applicable regulation. Exempted States will agree to provide complete lists of for-hire vessels and the required identification and contact information to NMFS and will enter into Memoranda of Agreement to formalize the agreements. Since all states except New Jersey currently license for-hire fishing, it is expected that most states will be designated as Exempted States for for-hire fisheries under the proposed rule. In New Jersey, a state which does not issue state commercial permits to individual vessels, the preponderance of for-hire vessels are permitted with NMFS with the State adopting Federal for-hire regulations in their waters. Between the exemptions available to vessels from Exempted States and those remaining that will have another NMFS-issued license or permit, it is expected that very few for-hire vessels will need to comply with the registration requirement under the proposed rule.

It is expected that for-hire vessel information currently collected by most states will be sufficient to fulfill the data collection requirements of the preferred alternative. It is anticipated that most states which currently license for-hire vessels will be granted Exempted State status. Therefore, no additional cost burden or changes in gross revenues is anticipated for for-hire vessels operating in states granted Exempted State status.

To address the likelihood that some vessels will not be exempt from the federal registration requirement proposed by this rule, NMFS conservatively estimated that 20% of for-hire vessels nationwide would not be exempt. This is a very conservative estimate because it is anticipated that only New Jersey, which does not license for-hire vessels, but, based on voluntary registration information, is estimated to currently include approximately 8% of U.S. for-hire vessels, will not be granted Exempted State status.

Therefore, of the 11,953 for-hire vessels operating in the U.S., NMFS estimated that 2,390 vessels will not be exempt from the proposed federal

registration requirement. The cost per vessel to comply with this proposed rule is anticipated to range between \$15 and \$25.

To determine the economic impact of the administrative fee on individual vessels, the for-hire vessels in NY, NJ, MD, DE, and VA were examined. It was estimated that each individual for-hire vessel earned \$ 95,700 in revenues based on an angler fee of \$41.09 and the assumption that 590 vessels or 1.20 x 491 (the known number of permitted vessels from those states) operated as for-hire vessels. Based on these assumptions the adverse economic impact of a \$25 administrative fee would be a reduction in the revenue of the average individual vessel of 0.03 percent. Therefore, NMFS has concluded that implementation of this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Statistics.

Dated: June 9, 2008.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to add subpart P to 50 CFR part 600 to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

Subpart P—Marine Recreational Fisheries of the United States

Sec.

- 600.1400 Definitions.
- 600.1405 Angler registration.
- 600.1410 Registry process.
- 600.1415 Procedures for designating exempted states-general provisions.
- 600.1416 Requirements for exempted state designation based on submission of state license holder data.
- 600.1417 Requirements for exempted state designation based on submission of recreational survey data.

Authority: 16 U.S.C. 1881.

Subpart P—Marine Recreational Fisheries of the United States

§ 600.1400 Definitions.

(a) *Anadromous species* means the following:

American shad: *Alosa sapidissima*
 Blueback herring: *Alosa aestivalis*
 Alewife: *Alosa pseudoharengus*
 Hickory shad: *Alosa mediocris*
 Alabama shad: *Alosa alabamae*
 Striped bass: *Morone saxatilis*
 Rainbow smelt: *Osmerus mordax*

Atlantic salmon: *Salmo salar*

Chinook, or king, salmon:

Oncorhynchus tshawytscha

Coho, or silver, salmon:

Oncorhynchus kisutch

Pink salmon: *Oncorhynchus*

gorbuscha

Sockeye salmon: *Oncorhynchus nerka*

Chum salmon: *Oncorhynchus keta*

Steelhead: *Oncorhynchus mykiss*

Coastal cutthroat trout: *Oncorhynchus*

clarki clarki

Eulachon or candlefish: *Thaleichthys*

pacificus

Atlantic sturgeon: *Acipenser*

oxyrhynchus oxyrhynchus

Shortnose sturgeon: *Acipenser*

brevirostrum

Gulf sturgeon: *Acipenser oxyrhynchus*

desotoi

White sturgeon: *Acipenser*

transmontanus

Green sturgeon: *Acipenser medirostris*

(b) *Angler* means a person who is angling (see 50 CFR 600.10).

(c) *Authorized officer* has the same meaning as in 50 CFR 600.10.

(d) *Exempted state* means a state that has been designated as an exempted state by NMFS pursuant to § 600.1415.

(e) *For-hire fishing vessel* means a vessel on which passengers are carried for a fee to engage in angling.

(f) *Indigenous people* means persons who are documented members of a federally recognized tribe or Alaskan Native Corporation or, for the western Pacific region, persons who are resident in the region who are descended from the aboriginal people indigenous to the region who conducted commercial or subsistence fishing using traditional fishing methods, including angling.

(g) *Spearfishing* means fishing for, attempting to fish for, catching or attempting to catch fish by any person with a spear or a powerhead (see 50 CFR 600.10).

§ 600.1405 Angler registration.

(a) The requirements of this section apply to any person who does any of the following:

(1) Engages in angling or spearfishing for:

(i) Fish in the EEZ;

(ii) Anadromous species in any tidal waters;

(iii) Chinook salmon, coho salmon, pink salmon, sockeye salmon, chum salmon and Atlantic salmon in all waters except the Great Lakes and their tributaries and those waters which are landlocked, with no access to the ocean;

(iv) Continental Shelf fishery resources beyond the EEZ.

(2) Operates a for-hire fishing vessel in the EEZ.

(3) Operates a for-hire fishing vessel that engages in angling or spearfishing for:

(i) Anadromous species in any tidal waters;

(ii) Chinook salmon, coho salmon, pink salmon, sockeye salmon, chum salmon and Atlantic salmon in all waters except the Great Lakes and their tributaries and those waters which are landlocked, with no access to the ocean;

(iii) Continental shelf fishery resources beyond the EEZ;

(4) Possesses equipment used for angling or spearfishing and also possesses:

(i) Fish in the EEZ;

(ii) Anadromous species in any tidal waters;

(iii) Chinook salmon, coho salmon, pink salmon, sockeye salmon, chum salmon and Atlantic salmon in all waters except the Great Lakes and their tributaries and those waters which are landlocked, with no access to the ocean;

(iv) Continental shelf fishery resources beyond the EEZ.

(b) No person may engage in the activities listed in paragraph (a) of this section unless that person:

(1) Has registered annually with NMFS in accordance with § 600.1410;

(2) Holds a valid fishing license issued by, or is registered by, an exempted state;

(3) Is a resident of an exempted state, but is not required to hold a fishing license under the laws of that state;

(4) Holds a permit issued by NMFS for for-hire fishing under 50 CFR §§ 622.4(a)(1), 635.4(b), 648.4(a), or 660.70(a)(1).

(5) Is under the age of 16;

(6) Is angling aboard a for-hire fishing vessel that is in compliance with NMFS and state for-hire vessel permit, license or registration requirements; or

(7) Holds a commercial fishing license or permit issued by NMFS or a state and is lawfully fishing or in possession of fish taken under the terms and conditions of such license or permit.

(c) Any angler or spear fisher or operator of a for-hire vessel must, on request of an authorized officer, produce the NMFS registration number and certificate or evidence that such person or for-hire vessel operator is exempt from the registration requirement pursuant to § 600.1405(b)(2) through § 600.1405(b)(7).

§ 600.1410 Registry process.

(a) A person may register through the NMFS web site at www.nmfs.noaa.gov or by calling a toll-free telephone number available by contacting NMFS or at the NMFS website.

(b) Individuals must submit their name; address; telephone number;

