

**Appendix B to Part 241—[Amended]**

■ 89. Footnote 1 to appendix B of part 241 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

**PART 244—[AMENDED]**

■ 90. The authority citation for part 244 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.49.

**§ 244.5 [Amended]**

■ 91. Paragraph (a) of § 244.5 is amended by:

- a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
- b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
- c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Issued in Washington, DC on December 18, 2008.

**Clifford C. Eby,**

*Acting Administrator, Federal Railroad Administration.*

**Note:** This appendix will not appear in the Code of Federal Regulations.

**Appendix: “Step-by-Step Calculations To Determine Civil Monetary Penalty Update: 2008”****Step-by-Step Calculations To Determine Civil Monetary Penalty Update: 2008**

These calculations follow U.S. Department of Transportation and Government Accountability Office (GAO), formerly the General Accounting Office, guidance to determine if the minimum civil monetary penalty (CMP) should be updated according to the Inflation Act. (Sources for guidance: (1) GAO attachment to memorandum with subject “Annual Review of Department of Transportation’s (DOT) Civil Penalties Inflation Adjustment,” dated July 10, 2003; (2) policy paper entitled “Federal Civil Penalties Inflation Adjustment Act of 1990”). Overall, the minimum rises from \$550 to \$650 for 2008, under the Inflation Act.

**Minimum CMP**

The current minimum CMP is \$550, last updated on May 28, 2004. See 69 FR 30592.

**Step 1:** Find the Consumer Price Index (CPI). (Bureau of Labor Statistics (BLS), 1967 Base, U.S. City Average).

The CPI for June of the preceding year, i.e., CPI for June 2007 = 624.129.

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2004 = 568.2.

**Step 2:** Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$COLA = CPI \text{ for June } 2007 = 624.129 = 1.09843, \text{ CPI for June } 2004 = 568.2.$

**Step 3:** Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding. Raw Inflation Adjustment =  $CMP \times COLA = \$550 \times 1.09843 = \$604.14 \approx \$604.$

**Step 4:** Round the Raw Inflation Adjustment Amount. Recall that the increase in the CMP is rounded, according to the rounding rules.

Increase = Raw Inflation Adjustment – Original CMP =  $\$604 - \$550 = \$54.$

Use the following rounding rule: “If the current unadjusted penalty is greater than \$100 and less than or equal to \$1,000, round the increase to the nearest multiple of \$100.” (Federal Civil Penalties Inflation Adjustment Act of 1990, p. 4).

Multiples of \$100 are \$0, \$100, \$200. \* \* \* The nearest multiple of \$100 is therefore \$100. Rounded, the \$54 increase = \$100.

**Step 5:** Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase =  $\$550 + \$100 = \$650.$

**Step 6:** Apply a 10% Ceiling if Necessary.

As the minimum CMP has been adjusted previously according to the Inflation Act, the 10% cap for first-time adjustments does not apply.

**Step 7:** Determine New Penalty.

The new minimum CMP = \$650.

For 2008, the minimum CMP rises by \$100.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 600**

[Docket No. 071001548–81392–02]

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:** Final rule.

**SUMMARY:** NMFS issues this final rule to adopt regulations to implement the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulations establish a national registry of recreational anglers fishing in the Exclusive Economic Zone (EEZ), for anadromous species in tidal waters or for Continental Shelf fishery resources beyond the EEZ. Persons will not be required to register with NMFS if they are licensed by a state that provides 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:** This final rule is effective January 29, 2009, except for the amendments to § 600.1405 which are effective January 1, 2010.

**ADDRESSES:** Copies of the Regulatory Impact Review/Regulatory Flexibility Act Analysis are available from: Gordon Colvin, Office of Science and Technology, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. Background information and documents are available at the NMFS Office of Science and Technology website at <http://www.st.nmfs.noaa.gov/mrip/>

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Office of Science and Technology and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Gordon Colvin, phone: 301–713–2367; fax: 301–713–1875; or e-mail: [gordon.colvin@noaa.gov](mailto:gordon.colvin@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This final rule is accessible via the Internet at the Office of the Federal Register’s Web site at [http://www.access.gpo.gov/su\\_docs/](http://www.access.gpo.gov/su_docs/).

**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. In response, NMFS established the Marine Recreational Information Program ("MRIP") to further study and evaluate the many recommendations in the NRC review, and to design and implement the necessary changes and improvements to the system of regional surveys of marine recreational fishing in the nation's coastal states. More information on this program is available at: [www.countmyfish.noaa.gov](http://www.countmyfish.noaa.gov).

As part of MRIP, NMFS is establishing the National Saltwater Angler Registry Program ("Registry Program") to implement certain 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. Further, the Secretary is to exclude from the federal registration requirement those anglers and vessels that are licensed or registered by a state if the Secretary determines that information from the state program is suitable for the Secretary's use or is used to assist in completing marine recreational fisheries statistical surveys, or evaluating the effects of proposed conservation and management measures for marine recreational fisheries. The resultant federal Registry must address both the qualifications and procedures for registering anglers and vessels and for excluding 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 advised that a universal registry or license-based list of all saltwater anglers, without exceptions 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 fishing for 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 excepted from, 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 final rule was developed consistent with the foregoing program requirements. It is intended to facilitate the development of a national registry or database of identification and contact

information for recreational anglers and for-hire fishing vessels that engage in angling and spearfishing for marine and anadromous fish. 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 final rule requires persons who are angling, spear fishing, in possession of angling or spearfishing equipment or operating a vessel that carries recreational fishing passengers for-hire in the EEZ, or who are angling, spear fishing or operating a vessel that carries recreational fishing passengers for-hire for anadromous species in tidal waters, to register annually with NMFS. The registration requirement is effective January 1, 2010. 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 rule implements 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 are not required to register annually if they hold a license issued by, or are registered by, a state which has been designated as an exempted state as described below. Persons who hold a state or federal commercial fishing license or permit or a license or permit to engage in a subsistence fishery, and who are lawfully fishing or in possession of fish pursuant to such license or permit, are not required to register; however, holders of commercial or subsistence licenses or permits who are angling or spear fishing recreationally, outside the terms and conditions of the commercial or subsistence license or permit, are required to register. Anglers under the age of 16 are not required to register, although they could register voluntarily, at no cost. This, in part, is 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 will need to register and, if contacted by surveys, will be able to provide the angling effort information for minors residing in the same household. Anglers fishing on licensed or registered for-hire fishing vessels are also not required to register with NMFS.

The fee for registering is waived for non-commercial angling or spear fishing by indigenous people, but the

requirement to register is not. The 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 register indigenous fishers 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 final rule also establishes the procedures and guidelines by which states may be designated as exempted states. A state may apply for designation by submitting a proposal that addresses the requirements as noted below. A Memorandum of Agreement ("MOA") between NMFS and each state will be executed to establish the terms of designation. States will 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 database; or (2) by participating in regional surveys of recreational catch and effort and making the resultant data available to NMFS. The 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.

### Comments and Responses

On June 12, 2008, NMFS published a notice of the proposed rule (73 FR 33381). The initial public comment period ended on August 11, 2008, and was extended to August 21, 2008 (73 FR 46579). NMFS received comments from 444 entities, including individuals, 18 states and interstate organizations, 3 Fishery Management Councils and non-governmental organizations representing both marine recreational fishing and marine conservation interests. One petition was received that was signed by 869 individuals. When possible, the concepts relayed in the comments have been consolidated and responded to in turn. The comments and responses have been grouped under subject headings for ease of review.

#### *Comments that Express General Opposition or Support for the Proposed Rule*

*Comment 1:* A number of comments oppose registration or licensing as an unwelcome imposition on unrestricted access to marine fisheries, an unnecessary burden on anglers, or an

unwelcome federal government intrusion in people's lives.

*Response:* Registration is mandated by § 401(g) of the MSA. NMFS is required to implement this requirement consistent with the law.

NMFS notes that, in 17 of 25 states with marine and/or anadromous fisheries, state fishing licenses are currently required for some or all fishing for saltwater and anadromous fish.

NMFS believes that the prospective burden on anglers to comply with the federal registration requirement can be minimized if anglers are licensed or registered by the states and the states seek designation as exempted states as provided in the rule, and agree to submit their data to the national registry. Anglers who hold licenses or registrations from exempted states are not required to register with NMFS.

*Comment 2:* Commercial fishing is not adequately regulated and is responsible for fishery stock conditions, rather than recreational fishing. It is not necessary to regulate recreational fishing because recreational fishers catch too few fish to affect marine fish populations.

*Response:* Although the catch of individual anglers may seem minor, perhaps insignificant, in the context of large commercial fisheries, the collective catch of all marine anglers is potentially large and very significant for many fisheries. In 2006, over 15 million saltwater anglers in the U.S. made almost 100 million fishing trips. This collective level of fishing effort results in a significant proportion of harvest for many species. For example, in 2006, recreational anglers landed the following proportions of these species:

Striped bass: 82%  
 Bluefish: 71%  
 Summer flounder: 46%  
 Dolphin fish: 94%  
 Atlantic croaker: 32%  
 King mackerel: 57%  
 Sheepshead: 82%  
 Black drum: 49%  
 Spanish mackerel: 43%  
 Tautog: 92%  
 Red snapper: 42%  
 Scup: 24%  
 Black sea bass: 46%  
 Groupers: 36%  
 Black rockfish: 83%  
 Lingcod (not including Alaska): 66%  
 Blue rockfish: 94%  
 Yellowtail: 94%  
 California halibut: 38%

The NRC panel determined that recreational fishing is significant, noting in its first general conclusion, "...marine recreational fishing is a significant source of fishing mortality for many marine species and that adequate

scientific information on the nature of that mortality in time and space is required for successful management of those species."

Both commercial and recreational fisheries are managed under the MSA. Commercial fishing in the US EEZ is subject to extensive permitting, reporting and regulatory requirements necessary to implement Fishery Management Plans adopted under the MSA, and to comply with the provisions of the MSA and other applicable law.

*Comment 3:* Comment opposes federal involvement in data collection, management and enforcement of salmon fisheries in Alaska.

*Response:* The rule will not change the management jurisdiction of salmon in Alaska.

*Comment 4:* The U.S. Fish and Wildlife Service, not NOAA, should carry out this program.

*Response:* The MSA mandates that the MRIP and the federal angler registry be implemented by the U. S. Department of Commerce, within which NMFS is located.

*Comment 5:* The registration requirement will cause people to choose not to fish. This will result in adverse impact to fishing businesses.

*Response:* The registration requirement and/or the fee requirement, when it becomes effective, may cause some persons to decide not to fish. NMFS evaluated this impact in the Regulatory Impact Review/Regulatory Flexibility Act Analysis (RIR/RFAA) prepared for this rule, and concluded that there is no empirical information available to determine how the regulation will affect angler behavior. The RIR/RFAA includes an estimate of a range of possible reduction of angler expenditures. The RIR/RFAA also concluded that expenditures not made for recreational angling are likely to be spent on some other recreational activity. Therefore it is not expected that a loss in angler expenditures will affect the economy at a national or state level.

*Comment 6:* The registry rule adds to the burden and complexity of federal regulation of the marine charter boat business. Regulatory requirements should be simplified and streamlined.

*Response:* NMFS believes the registry rule includes measures to minimize the burden on for-hire fishing businesses. First, passengers on licensed for-hire vessels will not be required to register, eliminating the burden to the vessel of checking its customers for registration or licenses. Also, for-hire vessels will only need to register federally if they do not have another federal for-hire permit or license. Last, most states license for-

hire vessels and will seek exempted state status for for-hire fishing vessels. NMFS believes very few for-hire vessels would need to comply with a federal registration requirement under the rule.

*Comment 7:* The imposition of the registration requirement and of the registration fee may anger anglers and cause them to fail to cooperate with surveys when contacted, or to report inaccurately.

*Response:* NMFS believes that the vast majority of anglers will understand that it is in the best interest of sport fisheries to have complete and accurate data. NMFS and its partners will implement angler outreach and education programs to communicate this message.

*Comment 8:* A number of comments generally support the provisions of the proposed rule.

*Response:* NMFS acknowledges these comments.

#### *Comments Related to Proposed Registration Fees and State License Fees*

*Comment 9:* A number of comments expressed opposition to the registration fees proposed to be adopted in 2011.

*Response:* The registration fee requirement is consistent with NOAA policy and with the provisions of the MSA and other NMFS permits and registrations. Section 401(g)(1) of the MSA expressly authorizes charging a fee for registration beginning in 2011. A registry fee also establishes an incentive for states to take necessary action to be designated as exempted states. Complete angler registries, as recommended by the NRC Panel, can be developed only if the states license or register all of the anglers, since NMFS cannot require all anglers fishing in state waters to register.

*Comment 10:* If a registration fee is charged, fee revenue should be dedicated to marine fishery conservation.

*Response:* Current federal law does not authorize registration fees collected under § 401(g) of the MSA to be dedicated to marine fish conservation. Any fees collected would be deposited in the U.S. Treasury.

NMFS notes that, while the registration fee revenue cannot be deposited in a separate, dedicated account, revenue from the fees is to be equal to the cost of administering the registry program. The funding for that program administration is derived from appropriations from the general treasury, that is, the same overall fund to which registry fees will be deposited.

*Comment 11:* The estimated fee of \$15 to \$25 is too high. NMFS should analyze the cost to administer the program, and

the fee should not exceed the cost of administering registrations.

*Response:* The rule does not set the registration fee. Under NMFS policy, the fee will be determined annually, beginning in 2010 for the 2011 registration year, based on the assessed cost of administering the registration program. Costs to be included are the costs of: operating and maintaining toll-free telephone service and the web-based registration portal and associated help desk and related services; printing and mailing registration certificates; managing the registry program; maintaining the registry database; conducting outreach efforts to make anglers aware of registration requirements. The actual fee will be based on an annual assessment of these and any other registry-related costs, and will not exceed the cost of actually administering the program.

For purposes of providing information to the affected public and for complying with applicable law, the proposed rule included a conservatively high estimate of the annual registration fee based on current estimates of implementation costs and number of anglers to be registered. If actual costs and number of registrants is significantly different than current estimates, the fee will be different than stated in the proposed rule. Because conservative estimates were used, it is unlikely that the actual fee will be higher than the \$15 to \$25 estimate in the proposed rule. It is noted that this estimate is lower than the fee currently assessed for the HMS angling permits (50 CFR 635.4(c)), a transaction similar to a recreational registration.

*Comment 12:* Registration fees should be waived or reduced for: senior anglers; disabled persons; active-duty military; indigent persons; shore anglers.

*Response:* NMFS notes that many states provide for free or reduced-fee licenses for anglers in these or similar categories. However, the state license fees generate positive net revenue to support state conservation programs, whereas the federal registration fee will be set at the amount sufficient to generate revenue equivalent to the cost of administering the registration program. The final rule does not provide for reduced or free registrations for additional categories of anglers.

*Comment 13:* Comments oppose the proposed registration fee waiver for indigenous people.

*Response:* NMFS will retain the fee waiver for indigenous people for the reasons stated in the background section above.

*Comment 14:* How will indigenous people provide proof of their eligibility for a fee waiver? The proposed

definition is not sufficient for this purpose.

*Response:* When registering, people will provide information that documents why they are "indigenous people" as defined in the final rule, and affirm that the information they have provided is accurate.

*Comment 15:* NMFS should provide a reduced fee or free registration for those categories of anglers that receive reduced fee or free licenses in a specific state.

*Response:* Anglers who are licensed by exempted states will not be required to register with NMFS and will not have to pay a federal registration fee.

For anglers who are not licensed by exempted states, NMFS must apply consistent fee provisions to residents of all states, regardless of individual state license fee requirements. See Response 12 regarding consideration of reduced fees for certain categories of registrants.

*Comment 16:* Fees should be used only to support specified actions to improve recreational fishing, including stocking of fish, improving fishing access, developing artificial reefs, and law enforcement.

*Response:* Federal registry fees will be deposited in the general treasury. NMFS does not have the legal authority to set these funds aside for the uses cited in the comments.

*Comment 17:* NMFS should use fee waivers or reduced fees as an incentive to complete and accurate reporting.

*Response:* It is not possible to build this suggestion into the final rule. For example, NMFS will not immediately be able to determine how complete and accurate a person's reports are. However, the use of incentives to promote complete and accurate reporting is an innovative suggestion that will be conveyed to the MRIP Operations Team for consideration in future survey design and development.

*Comment 18:* Whether the revenue is collected by the state or the federal government, a panel of anglers should have a voice in determining how the revenue is used.

*Response:* NMFS is required to deposit registration fee revenue in the general treasury and can not utilize the revenue for programs that benefit sport fisheries.

#### *Comments Related to Exceptions to the Federal Registration Requirement*

*Comment 19:* Persons who hold HMS angling permits under 50 CFR 635.4(c) should not be required to register with NMFS because NMFS already has contact information for these individuals.

*Response:* NMFS agrees. Under the final rule these individuals are not required to register with NMFS. This exception applies only to the individual named on the HMS permit, and does not apply to other anglers fishing on the permit holder's vessel. Any such persons must comply with the registration requirements, unless they are otherwise not required to register with NMFS.

*Comment 20:* NMFS should accept a state's or all states' license database(s) and not require federal registration in the state(s). NMFS could also institute a program similar to the Harvest Information Program ("HIP"), in which states issue registration numbers to holders of state hunting licenses and provide the registration information to the U.S. Fish and Wildlife Service for surveys of migratory bird hunters.

*Response:* NMFS agrees that the most effective, complete and convenient way to create a national registry would be to utilize complete lists of licensees or registrants (including registration lists equivalent to the HIP information) from states, and intends to do so wherever possible, consistent with the requirements of the MSA and the NRC Panel recommendations. To that end, NMFS has included the state exemption process in the rule.

NMFS cannot comply with the MSA if it exempts a state that has major exceptions to its license requirements, however. Sec. 401(g)(3) of the MSA requires NMFS to implement a program to improve recreational survey data that includes, to the extent feasible, implementing the recommendations of the NRC Panel. The Panel repeatedly recommended that all anglers, without exception, be included in the contact list for future telephone surveys. Accepting a state license or registry list that excludes a significant category of anglers would not be consistent with the NRC Panel's advice and, hence, would not comply with the MSA.

*Comment 21:* NMFS should amend § 600.1405(a)(4)(i) to provide a "transit exemption" for anglers who transit the EEZ to fish in state waters adjacent to offshore islands.

*Response:* If persons who are transiting the EEZ between state waters and offshore islands are not required to register, the enforcement of the federal registration requirement in the EEZ will be significantly impaired. Accordingly, the final rule does not provide for a transit exemption.

*Comment 22:* Exceptions to the federal registration requirement are inconsistent with the NRC recommendations and may create a "multi-class" system.

*Response:* NMFS believes that the exceptions to the federal registration requirement in the rule (youth under age 16; licensed commercial or subsistence fishers; persons fishing aboard licensed for-hire vessels; persons licensed or not required to be licensed by exempted states) are consistent with the NRC recommendations. Exempted state license programs may exclude persons: under age 16; fishing on a licensed for-hire vessel or fishing pier; who are disabled; who are active military while on leave. NMFS does not agree that these exceptions are inconsistent with the NRC recommendations, nor does NMFS agree that these exceptions are class-based.

*Comment 23:* The state has a disproportionately high number of military and seniors who fish and will not be required to register with NMFS. How will this fishing effort be measured?

*Response:* The rule requires seniors and military personnel to register with NMFS, unless they are license holders/registrants of an exempted state or are residents of an exempted state that are not required to be licensed or registered by that state, or are otherwise exempt per the provisions of § 600.1405(b). There are no specific exceptions to the registration requirements in § 600.1405(b) for seniors or military personnel.

*Comment 24:* The state has a high proportion of minorities. If the state is not designated as an exempted state, the federal registration requirement may disproportionately affect minorities.

*Response:* Within a state, the effect of the federal registration requirement is proportionately the same for minority and non-minority groups. For the nation as a whole, the impact may be slightly different dependent on the ethnic makeup of the anglers in the non-exempt as compared to the exempt states. NMFS does not believe this effect will be significant, and emphasizes that there is no intent to disproportionately affect minorities. NMFS also notes that states must decide whether to qualify for, and to seek, exempted state status.

*Comment 25:* There should be no exceptions to the registration requirement.

*Response:* The rule includes four principal exceptions to the requirement to register with NMFS: (1) persons who are licensed or registered by an exempted state or who are not required to hold a license in such state; (2) persons who are fishing aboard a licensed for-hire fishing vessel; (3) persons under the age of 16; (4) persons who are fishing pursuant to a commercial or subsistence fishery

license or permit. The first exception is specifically provided for in § 401(g) (2) of the MSA. As recommended by the NRC Panel, in the future for-hire fisheries will be accounted for separately from private boat and shore fishing modes. Therefore, it is not necessary to register anglers who only fish on for-hire vessels, as their effort will be accounted for in the separate for-hire surveys. The background section above explains the basis for exempting anglers under age 16. NMFS will develop a program for seeking voluntary registration of these anglers. Licensed commercial and subsistence fishers report their catches separately from recreational surveys, and it is appropriate to avoid duplication of that catch reporting or confusion of the two sectors' catch for future management and allocation decisions.

*Comment 26:* Youth under age 18, not 16, should not have to register.

*Response:* Age 16 was selected because it is the most common age at which a person must first obtain a fishing license in states that have saltwater licenses.

*Comment 27:* Occasional or vacation anglers should not be required to register with NMFS.

*Response:* If anglers who fish infrequently are not included in the database from which the survey is conducted, it is likely that the resultant estimates of angling effort will be biased upward. The NRC panel emphasized the need to have a complete and unbiased registry of anglers.

*Comment 28:* Certain categories of fishermen who fish mainly for subsistence should not be required to register with NMFS.

*Response:* NMFS will not require subsistence anglers and spear fishers who are enrolled or permitted in a state or federal subsistence fishery program to register. Limiting subsistence exceptions to such enrollees assures that the individuals and their catch is accounted for, and also assures that the registration requirement is fully enforceable.

*Comments that Address Survey Design and Management Issues and that Advocate Alternative Survey Approaches*

*Comment 29:* NMFS should not implement a registry. NMFS should utilize other methods to obtain the necessary data rather than a registry-based telephone survey.

*Response:* NMFS is committed, and required under § 401 of the MSA, to implement survey changes that, to the extent feasible, follow the recommendations of the NRC panel. The process that has been established for the

Marine Recreational Information Program (MRIP) will ensure comprehensive evaluation of the NRC Panel recommendations, and final decisions on survey design and sampling methods to be used in the various regional surveys will be based on the outcome of that evaluation and the best scientific advice available. While it is possible that household telephone surveys may not be utilized in all future surveys, NMFS believes that it is likely that such surveys will continue to play an important role in the future surveys for at least some regions of the country.

*Comment 30:* NMFS should use data provided voluntarily by anglers rather than survey-based data.

*Response:* The MRIP will examine use of angler-provided data for various purposes. However, it is necessary to have a complete and unbiased accounting of all angler catch and effort to meet the requirements of the MSA and other applicable law. Use of only that data that is provided voluntarily by those anglers who choose to provide it would likely introduce considerable bias into the basic estimates of angler effort and catch.

*Comment 31:* A number of comments, including 869 signers of a petition, stated that, since NMFS is only concerned with fisheries in the EEZ, NMFS should register vessels, not anglers, in those areas that have no anadromous fisheries.

*Response:* NMFS is required by § 401(g)(3) of the MSA to implement a program to improve recreational survey data that includes, to the extent feasible, implementing the recommendations of the NRC Panel. The Panel repeatedly recommended that all anglers, without exception, be included in the contact list for future telephone surveys. The NRC recommendations also call on NMFS to build a system of regional surveys that account for all saltwater fishing, not just fishing in the EEZ. A vessel registry will not account for shore fishing modes.

Vessel registries that obtain fishing effort (and catch) information only from the licensed or registered vessel owner may fail to collect complete information on the fishing catch and effort of the non-licensed persons fishing on a registered vessel. To the extent that such data is not completely collected for all passengers on registered vessels, the resultant survey data will be subject to bias. Vessel registries or vessel-based surveys may be a part of a comprehensive regional survey program that collects effort information in a variety of ways and includes measures to assure that the necessary data are

collected from all anglers, so that the estimates are not biased.

*Comment 32:* State vessel registration and beach buggy registration or permit lists should be used as the sample list for surveys rather than an angler registry.

*Response:* Use of state vessel registration lists is subject to the limitations cited in the response to the previous comment. Adding beach buggy permit holder lists will only add a fraction of the shore-based anglers to the list, and will still provide an incomplete list of shore-based anglers. Further, surveying only the holders of beach buggy permits excludes the non-permitted passengers in these vehicles, introducing potential bias to the survey results.

*Comment 33:* The geographic coverage of current angler intercept surveys may be different than the area of tidal waters in which anglers would be required to register in order to create a database for telephone surveys. To prevent a mismatch in intercept vs. telephone coverage, NMFS should either expand intercepts to all tidal waters or confine registration requirements to marine waters in which intercepts are conducted.

*Response:* NMFS acknowledges the comment. Final decisions on the geographic scope of all regional intercept surveys have not been made. Some partners have suggested that coverage should be expanded to include all fishing for anadromous fish in non-tidal fresh waters, as well as all tidal waters. Others have recommended limiting coverage to saline and brackish waters. In order to provide for effective enforcement of the registry rule, while providing reasonable coverage of marine and estuarine waters in which angling for anadromous species occurs, NMFS has chosen to require registration for angling for anadromous species in all tidal waters.

*Comment 34:* The registration requirement may result in mis-reporting of fishing location.

*Response:* NMFS acknowledges that persons who fish in the EEZ, but who have not registered, may mis-report their fishing location when surveyed.

*Comment 35:* The registry program may result in over-coverage. This may result in part from mixing registration data from a limited federal registrant list in some states with more complete lists from states with combination licenses.

*Response:* NMFS does not believe the registry program will result in over-coverage. The registry is a means of reducing, not increasing, over-coverage. The over-coverage that results from current random-digit-dialing of coastal

county households will decrease over time as NMFS and its partners develop more complete regional registry-based surveys.

NMFS also notes that exempted states with combination licenses will be required to identify the salt water anglers within these lists within two years (see § 600.1416(d)(3)). This provision will further reduce the potential for over-coverage.

*Comment 36:* Surveys being conducted by the state (CA, AK, FL, ME *et al.*) are sufficient. NMFS should utilize the state's survey data.

*Response:* NMFS will use the data provided by state surveys that are part of an approved regional survey pursuant to § 600.1417. Anglers in such states will not be required to register with NMFS.

*Comment 37:* A number of comments addressed survey design and operational issues, including angler outreach and education needs, asking persons contacted in the telephone survey to provide catch as well as effort information, methods to facilitate the conduct of telephone surveys *et al.*

*Response:* The design and implementation of surveys is beyond the scope of the rule. NMFS appreciates the comments and will provide them to the MRIP Operations Team for its consideration in developing the future recreational fishing survey design.

*Comment 38:* The commenter prefers a program that provides for accurate, complete and verifiable documentation of all removals from the stock.

*Response:* A program of this nature, while ideal, would require a complete census and documentation of the nearly 100 million angler trips made annually. Such an effort is far beyond the capacity of NMFS and its partners, and is not a cost effective approach to determining marine recreational catch and effort.

*Comment 39:* For-hire data should be obtained separately and retained separately from other modes.

*Response:* MRIP will determine the survey design for future for-hire surveys. Consistent with the NRC Panel's recommendations, it is expected that for-hire surveys and estimates will be separate from those for other modes of fishing.

#### *Comments on the Proposed Requirements for Designating Exempted States Based on Submission of State License-Holder Data*

*Comment 40:* NMFS is authorized in § 401(g)(1) of the MSA to require federal registration of anglers only in the EEZ or, in state waters, only if they are fishing for anadromous species. NMFS should clarify the basis for the rule's

provisions that require states to license or register all anglers fishing in state waters, including those who fish only from shore, in order to qualify for exempted state status.

*Response:* Consistent with the provisions of MSA § 401(g)(3) and the NRC Panel recommendations, NMFS intends to implement a series of regional surveys that comprehensively account for saltwater recreational fish catch and effort in all fishing modes and areas and which utilize angler registries that include all anglers, without significant exceptions or exemptions. If, contrary to the NRC Panel's advice, NMFS made use of incomplete registries or state license lists that excluded major categories of anglers, such as all anglers that fish from shore, the resultant survey estimates of catch and effort would likely be biased.

*Comment 41:* Section 600.1416(c) forces a state to prove a negative.

*Response:* States can affirmatively demonstrate that exclusion of certain angler groups from a license-based survey contact list will result in a level of statistical variation that is statistically insignificant.

*Comment 42:* There is a need for the rule to address states' free fishing days.

*Response:* Persons who are fishing without a license in exempted states during the state's "free fishing days", are not required to hold a state license and are therefore not required to register with NMFS pursuant to § 600.1405(b)(3).

*Comment 43:* NMFS should clarify whether states can be exempted separately for anglers and for-hire vessels.

*Response:* Section 600.1415(b)(2) provides for states to submit license-holder data, and be exempted, for either individual anglers or for-hire vessels.

*Comment 44:* Providing information on the regions of the country in which a state-licensed angler fishes is problematic. States do not get this kind of information from license applicants.

*Response:* States are not required to provide this kind of data to be designated as exempted states.

*Comment 45:* The state does not get telephone numbers for all licensees. If required by § 600.1416(a), states may not qualify for exempted state status.

*Response:* The final rule provides that states will qualify for exempted state designation if they provide names and addresses of licensees/registrants and agree via the MOA to assist NOAA in developing databases that include telephone numbers and date of birth for their licensees/registrants.

*Comment 46:* How would exempted states get information on seniors who are not required to hold state licenses?

*Response:* States may choose to register or offer free or low cost licenses to seniors.

*Comment 47:* The state licenses guides, not their vessels. Notwithstanding, the state is able to fully participate in the ongoing For-Hire survey. Accordingly, the requirements of vessel identification information in § 600.1416(a) should not disqualify the state for designation as an exempted state for its for-hire fishing vessels.

*Response:* NMFS agrees. So long as a state can provide necessary contact information for all for-hire fishing operations in the state, it will qualify for exempted state status for the for-hire fishery. The language of § 600.1416(a) does not preclude such designation.

*Comment 48:* NMFS should review the data elements to be required from states to assure they are necessary.

*Response:* NMFS believes the data elements specified in the final rule are necessary.

*Comment 49:* Clarification is needed regarding the acceptability of lifetime licenses, military personnel exceptions and interstate license reciprocity in order for a state to be exempted.

*Responses:* States that issue lifetime licenses can qualify for exempted state status. These states must agree to refresh the address and telephone data for the lifetime license holders within two years of their designation. See § 600.1416(d)(2).

States that do not require active-duty military personnel to hold state licenses while on furlough will qualify for exempted state status. There are no other provisions related to military personnel in the rule. See § 600.1416(b)(5).

The rule does not preclude designation of a state as an exempt state if it has a license reciprocity agreement with another state.

*Comment 50:* The rule states that NMFS "may" allow an exception to the federal registration requirement for anglers from specified states. There should be more certainty.

*Response:* NMFS will not require anglers to register when they are licensed or registered by a state that meets the requirements for exempted state designation. NMFS believes the provisions of § 600.1405(b)(2) are clear in this regard.

*Comment 51:* NMFS should not exempt states based on state fishing licenses. States will not use license revenue to benefit fisheries.

*Response:* Section 401(g)(2) of the MSA provides that NMFS is not to

require anglers to register if they are licensed or registered by states which provide sufficient data to NMFS.

*Comments on the Proposed Requirements for Designating Exempted States Based on Participation in Regional Surveys of Recreational Catch and Effort*

*Comment 52:* The Western Pacific should be divided into at least two regions for purposes of consideration of regional survey-based exempted state designations, one for the Hawaiian archipelago and one for the western Pacific island territories and Commonwealths.

*Response:* NMFS agrees. The western Pacific is vast and the fisheries in the various island archipelagos are sufficiently different to designate two regions. At present, separate surveys are used to estimate non-commercial fishing catch in Hawaii and in the western Pacific U.S. territories and Commonwealths. These surveys are likely to remain separate and independent of each other under MRIP. The final rule has been modified to establish two separate regions, one for the state of Hawaii and one for the U.S. territories and Commonwealths in the western Pacific.

*Comment 53:* NMFS should revise the text in § 600.1417(b) to allow for effort data collection methods other than use of registries.

*Response:* NMFS agrees that, for approved regional surveys, methods for collecting angler effort data other than registry-based telephone surveys may be appropriate and conform to acceptable survey standards and practices. The intent of this provision in the proposed rule was to ensure that, where telephone surveys are part of regional survey designs, they utilize complete license-based registries rather than telephone directory-based lists of persons to be surveyed. The final rule has been modified to clarify this intent and to incorporate the comment.

*Comment 54:* Section 600.1417 should provide that a state exempted via the regional survey method will not be required to submit registry data to NMFS.

*Response:* The rule does not require a state exempted via the regional survey method to submit registry data to NMFS. See § 600.1415(a)(2).

*Comment 55:* NMFS should clarify the intent of § 600.1417(b). Is it intended that a state must fully qualify for a license-based exemption in order to also qualify for a survey-based exemption?

*Response:* No. A state may qualify for a regional survey-based exemption even



if it has no license. The final rule clarifies the intent of § 600.1417(b).

*Comment 56:* NMFS should amend § 600.1415 to automatically exempt states that are currently partnering with NMFS in regional recreational surveys.

*Response:* The final rule clarifies the requirements and adds options for states to be designated as exempted states based on their participation in regional surveys. NMFS believes that the process for designation of exempted states will appropriately formalize the commitment among the regional survey partners, including NMFS, and is not overly burdensome. However, the rule does not provide for automatic exempted state designation.

*Comment 57:* The rule should provide more information and clarify requirements by which states may be exempted based on participation in a regional survey.

*Response:* The final rule clarifies that a qualifying regional survey must include all of the states within such a region. In addition, the responses to comments 52 to 55 serve to add additional information and clarification regarding the requirements for state exemption based on participation in a regional survey.

*Comment 58:* If NMFS does not conduct surveys in certain areas (e.g. telephone surveys in Guam, CNMI, American Samoa), citizens of those areas will be required to register, but the registry will not be used for data collection.

*Response:* In such regions, NMFS strongly encourages the states to take such action as necessary to be designated as an exempted state.

*Comment 59:* In § 600.1416(b)(2), the reference to § 600.1415(c)(4)(i) is incorrect. It should be to § 600.1416(d)(1).

*Response:* The comment is correct. The final rule incorporates the revised reference.

*Comment 60:* NMFS should assure that exempted state survey data is sufficiently complete, accurate and timely for the needs of NMFS and the Councils.

*Response:* The MRIP will, over time, develop and implement a system of regional surveys that will provide data that meet the needs of NMFS and the councils. Survey and data quality standards will be developed and applied to all participating regional and state surveys that address satisfying these needs. These standards will be applied to regional surveys under § 600.1417(b)(4).

*Comment 61:* States should be able to submit proposals per § 600.1417 with a duration of more than one year.

*Response:* NMFS agrees. The final rule deletes the word “annual”. The state-federal MOA will specify the frequency of submission of state proposals.

#### *Comments Regarding the Applicability and Coverage of the Federal Registration Requirement*

*Comment 62:* In § 600.1404, NMFS should delete sections (1)(iii); (3)(ii) and (4)(iii). This will limit the registration requirement for persons fishing for salmon to those who are fishing in tidal waters, consistent with other anadromous species.

*Response:* NMFS agrees. The geographic scope of MRIP is not expected to include fishing in the non-tidal freshwater sections of rivers and watersheds in which anadromous fish, including salmon, migrate. Accordingly, the recommended revisions are incorporated in the final rule.

*Comment 63:* NMFS should amend § 600.1410(f) so that anglers’ federal registration term coincides with the angler’s state license term.

*Response:* In order to adopt this recommendation, NMFS would have to construct a complex system with multiple registration terms based on the license terms in each state. Moreover, the terms would be mainly applicable to states whose anglers are licensed and would presumably be exempted states or seeking exempted state designation. NMFS will maintain a single registration term for all federal registrants nation-wide: one year from the date of registration.

*Comment 64:* NMFS should explain more fully why anadromous fish managed by states are included.

*Response:* Angling for anadromous species is included in the actions for which registration is required because § 401(g)(1) of the MSA specifically requires such registration: “The program...shall provide for—...(A) the registration (including identification and contact information) of individuals who engage in recreational fishing—...(ii) for anadromous species;”...

*Comment 65:* NMFS should clarify the issue of who needs to register when fishing in state waters (i.e. clarify what is meant by “angling for anadromous species”).

*Response:* The rule states that registration is required for persons who are angling or spear fishing for anadromous fish in all tidal waters. Angling is defined as: fishing for, attempting to fish for, catching or attempting to catch fish by any person (angler) with a hook attached to a line that is hand-held or by rod and reel

made for this purpose. Spearfishing is similarly defined.

In tidal waters where anadromous fish are present, anglers would therefore need to be registered to be certain they would not be in violation of the registration requirement. NMFS will emphasize this in outreach and education messages in the non-exempted states where anadromous species are common.

*Comment 66:* The Background, paragraph 6, page 3, refers to “marine” anglers and vessels. This should be revised to reflect applicability to anadromous fish in fresh waters, including tidal fresh waters.

*Response:* The Background text has been modified in the final rule as suggested by the comment.

*Comment 67:* In CNMI, Guam and American Samoa, there are no commercial licenses. How would commercial fishing in these waters be excluded in order to prevent duplication?

*Response:* If there are no commercial licenses, persons who take fish for sale by angling and spear fishing will need to register under the final rule unless the state or territory is designated as an exempted state. Regional survey managers and commercial statisticians would need to collaborate to develop regionally-tailored approaches to gathering complete, but not duplicative, data.

*Comment 68:* Seniors who are not required to hold a license in exempted states would have to register federally.

*Response:* The comment is incorrect. Seniors who are not required to hold state licenses in exempted states are not required to register with NMFS pursuant to § 600.1405(b)(3).

*Comment 69:* NMFS should apply the registration requirement to recreational fishing as per 16 U.S.C. 1802 Sec. 3(37) as fishing for sport or pleasure. Using angling and spear fishing as proposed broadens the applicability of the rule to include certain subsistence and non-recreational uses.

*Response:* NMFS has chosen to apply the registration requirement to the specific, observable actions of angling or spear fishing rather than to the less well defined activity of recreational fishing. This approach is necessary to ensure that the requirement for registration can be effectively enforced. If the requirement were applied to “recreational fishing”, an officer would have to observe, and NMFS would have to prove, a person’s motivation for engaging in fishing. NMFS cannot enforce the rule on this basis. NMFS acknowledges that an effect of use of angling and spear fishing as the basis for



registration is to apply the requirement to certain subsistence and non-recreational fisheries. The registry fee for indigenous people is waived for this reason. NMFS also believes many states in which there are well defined subsistence fisheries will be designated as exempted states.

NMFS recognizes that, where there are established regulatory programs for subsistence fishing, requiring anglers and spear fishers who are enrolled or permitted in such programs to also register under this rule may cause unnecessary and confusing dual registration, and may also result in duplication of reporting and accounting for catch. Therefore, the final rule does not require persons who are formally enrolled or permitted to participate in state or federal subsistence fisheries to register with NMFS.

*Comment 70:* The rule should include a clear statement that anglers fishing in state waters would only have to comply with state licensing regulations and not have to register federally.

*Response:* Persons who are angling in state waters for anadromous species will have to register federally unless they meet the criteria of another provision of § 600.1405(b), even if a state license is also required. The rule specifies the angling and spear fishing activities that require federal registration. NMFS will provide public information and outreach materials that clarify these requirements for anglers.

*Comment 71:* NMFS should include the Alaskan halibut fishery.

*Response:* Individuals and charter boats that fish for Alaskan halibut in the EEZ are included in the registry program. If the state of Alaska is designated as an exempted state, its license holders will not be required to register with NMFS. NMFS fully expects that, if designated as an exempted state, Alaska will provide license-holder data that includes persons and charter boats that fish for halibut and/or acceptable survey data that includes halibut catch data.

*Comment 72:* NMFS should include charter fishing vessels in the registry program.

*Response:* Charter vessels are included in the registry program. See § 600.1405(a)(2) and (3) and § 600.1415(a)(1).

#### Comments Regarding Definitions

*Comment 73:* NMFS should add a definition of “tidal waters”. Consider a definition that defines tidal waters as those lying seaward of a line established in each coastal state’s laws or regulations to delineate the boundary between state freshwater and saltwater

licensing requirements or management zones.

*Response:* NMFS agrees with the need to add a definition of “tidal waters”, and has added the following definition to the final rule: waters that lie below mean high water and seaward of the first upstream obstruction or barrier to tidal action and that are subject to the ebb and flow of the astronomical tides under ordinary conditions.

NMFS is not able to incorporate by reference individual state boundaries as established by state laws. However, NMFS can consider incorporating state-established boundaries between salt water and fresh water license requirements or management areas in the Memoranda of Agreement for exempted states. Sections 600.1416(a) and 600.1416(d)(3) of the final rule have been modified to incorporate this provision.

*Comment 74:* Define “continental shelf fishery resources beyond the EEZ.”

*Response:* “Continental shelf fishery resources” and “exclusive economic zone” are defined in the MSA. Absent a definition in the rule, the statutory definition applies. The final rule references the statutory definition.

*Comment 75:* NMFS should define “licensed fishing piers.”

*Response:* The final rule refers to state-licensed fishing pier. Persons who fish on a state-licensed pier may or may not pay a fee to the permit holder and may or may not be required to hold a state fishing license.

*Comment 76:* NMFS should amend the definition of “for hire” fishing vessel to exclude fishing guides that operate in inland fresh waters.

*Response:* The final rule does not require the operator of a for-hire fishing vessel in non-tidal waters to register.

*Comment 77:* In § 600.1416(b)(4), NMFS should add “gig” to the gears used to spearfish.

*Response:* The definition of “spear” in § 600.10, which is applicable to § 600.1416(b)(4) is: “Spear means a sharp, pointed, or barbed instrument on a shaft. Spears can be operated manually or shot from a gun or sling.” This general definition should be applicable to gigs or other locally-named spear-like gear.

*Comment 78:* NMFS should clarify the difference between licensed piers in § 600.1416(b)(4) and public piers in § 600.1416(c)(3).

*Response:* In general, licensed piers are those which are licensed by a state and on which anglers may be allowed to fish without a state fishing license. Pier license holders may be required to submit data to the state regarding the fishing that occurs on the piers. States

that do not require anglers fishing on licensed piers to hold a state license may be designated as exempted states only if the pier permit holder supplies effort information or angler contact information to the state. Public piers referred to in § 600.1416(c)(3) are owned and operated by a public entity. On these piers, anglers, who would otherwise need a state license, are not required to hold one. NMFS believes only one state operates this kind of pier.

*Comment 79:* The definition of angler/spear fisher does not include other recreational gear types (nets, traps, hand harvest).

*Response:* The comment is correct. In general, the scope of surveys that NMFS will conduct using registry data will not include gear types other than angling and spear fishing.

*Comment 80:* The definition of angling should be included in the rule and should include both traditional angling and spearfishing.

*Response:* The rule’s definition of “angler” references the definition of angling in 50 CFR 600.10. NMFS believes that reference is appropriate and sufficient. The rule also includes a separate definition of “spearfishing”.

*Comment 81:* Anadromous species should be defined as per 50 CFR 600.10.

*Response:* In order to assure effective enforcement and to facilitate angler information and education regarding registration requirements, NMFS has determined that a definition of anadromous species that simply lists each covered species is the most effective.

*Comment 82:* NMFS should broaden the definition of a for-hire vessel to conform to the charter fishing vessel definition in the MSA: “The term ‘charter fishing’ means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing”.

*Response:* Consistent with the comment, the definition has been revised in the final rule to include vessels that carry passengers for a fee or other consideration.

*Comment 83:* Add the following species to the list in § 600.1400: Brook trout, brown trout, Dolly Varden and sheefish. Hickory shad should not be included in the list of anadromous species.

*Response:* NMFS believes that sea-run brook and brown trout fisheries are not currently of sufficient magnitude or significance to warrant adding them to the list of anadromous species.

NMFS has added sheefish and Dolly Varden to the definition in the final rule.

NMFS believes that hickory shad are properly classified as anadromous fish. See, for example, the Atlantic States Marine Fisheries Commission, *Amendment 1 to the Interstate Fishery Management Plan for Shad and River Herring*, April, 1999.

*Comment 84:* "State" should be defined.

*Response:* "State" is defined in the MSA. Absent a definition in the rule, the statutory definition applies. The final rule references the statutory definition.

*Comments Regarding the Registration Process and Information Required to Register*

*Comment 85:* The requirement for a registrant to state where they intend to fish may be perceived as limiting where a person may fish.

*Response:* The rule provides that, once a person has registered, he or she may fish in the EEZ or for anadromous species in any region of the country, regardless of their stated intentions at the time of registration. Registrants will be asked to provide information about the regions in which they expect to fish in order to compile accurate and complete regional registries of anglers for survey purposes. NMFS will develop informational materials for registrants and potential registrants that clarify this issue.

*Comment 86:* Date of birth should also be collected from registrants.

*Response:* NMFS agrees. Date of birth is added to the information to be provided by registrants. This information will assist in confirming the identity of individual registrants, and will enable NMFS to differentiate anglers within households for future angler-based survey purposes.

*Comment 87:* The rule should address confidentiality of state license data.

*Response:* The MOA's with exempted states will address use of state-supplied data.

*Comment 88:* A person should have to register only once. No annual renewal should be required.

*Response:* NMFS will require anglers to register annually. Experience using state license data indicates that it is necessary to update angler contact information annually. The proportion of license-holders whose address or telephone numbers change over the course of a year is too high to provide for sufficiently efficient and accurate surveys unless there are annual updates.

*Comment 89:* It is necessary to assure protection of personal information in the registry.

*Response:* NMFS will comply with federal requirements for protection of

personally-identifiable-information in its data files.

*Comment 90:* Persons should be able to register at point-of-sale outlets such as tackle shops.

*Response:* NMFS cannot establish a nation-wide system of registration vendors in a timely and cost effective manner. NMFS believes that the toll-free and internet-based registration options that will be made available are sufficiently convenient for the affected angling public and are cost effective for NMFS to implement.

*Comment 91:* Will a person be able to register if they do not have a telephone or if they choose not to provide the telephone number? How will the registration program and resultant survey deal with cell phone-only households?

*Response:* Persons will need to register either via toll-free telephone or internet. NMFS believes that essentially all anglers will be able to register via one of these means.

Registrants will need to provide a telephone number, which may be a cell phone number, in order to complete the registration process.

NMFS is exploring options to allow cell phone accounts to receive survey calls without any cost to the account.

*Comment 92:* NMFS should consider alternatives to requiring and enforcing a requirement for persons to provide identification information.

*Response:* NMFS is not aware of effective and enforceable alternatives to such requirements. The MSA requires identification and contact information.

*Comment 93:* Registrants should be asked to provide primary target species and primary mode of fishing when registering.

*Response:* The purpose of the registration program is to enable creation of regional registries of anglers from which lists of persons to be surveyed about fishing effort can be drawn. Target species and fishing mode are not currently required for effort characterization surveys. Moreover, information of this nature can be obtained during telephone surveys, and may not be necessary to obtain at time of registration.

MRIP may determine it necessary to expand the scope of telephone surveys in the future to capture this and other data.

*Comment 94:* The rule should clarify whether an angler or spearfisher who fishes in more than one state must register for each state in which they fish. Also, the rule should state whether an angler or spearfisher who holds a license from, or is registered by, an

exempted state needs to register if they fish in another state.

*Response:* The registration requirements and the exceptions thereto as set forth in § 600.1405(b) provide that a person who is required to register with NMFS must do so only once per year, regardless of where they fish. Further, a person who is not required to register with NMFS pursuant to § 600.1405(b)(2) or (3) need not register if they fish in a state other than that in which they qualified for the exception. NMFS will provide outreach and education materials that will clarify the registration requirements for the public.

*Comments Regarding the Role of the States in the Registry Program and State Costs for Implementing the Program*

*Comment 95:* The proposed rule does not estimate costs for states to educate anglers regarding registry program requirements.

*Response:* The statement is correct. NMFS intends to meet the necessary outreach and education needs for anglers regarding registration requirements.

*Comment 96:* NMFS should acknowledge the role of states in enforcing the rule and provide training and resources.

*Response:* NMFS agrees that state assistance in enforcing the registration requirement will be necessary.

*Comment 97:* The commenter suggested that states submit data on a bimonthly schedule.

*Response:* Data delivery requirements for exempted states will be negotiated and included in the MOA's. NMFS believes that these requirements should be flexible and should not be specified in the rule.

*Comment 98:* The updates required after two years for lifetime and combination licenses will be expensive for states to produce.

*Response:* NMFS acknowledges that there will be a cost to the states to prepare the updates.

*Comment 99:* The proposed registry program does not address the needs of the state within its waters.

*Response:* Pursuant to the provisions of the MSA, persons who fish exclusively for non-anadromous fish in state waters will not be required to register. NMFS must work with states to build complete angler registries that cover all fishing.

*Comment 100:* The registry requirement may drive anglers inshore, affecting what is measured. Further, the federal waters-only registration requirement may shift fishing effort to state waters, increasing fishing impact on state waters fishery resources and

burden state programs. This is mainly an issue after the fee is required in 2011.

*Response:* NMFS agrees that these outcomes could occur. Nonetheless, the MSA requires NMFS to register anglers fishing in the EEZ to register, and is not authorized to extend that requirement to fishing in state waters for non-anadromous fish. If states are designated as exempted states by submitting complete angler registries, or by participating in approved regional survey programs, these outcomes will not occur.

*Comment 101:* Decreasing fishing effort in federal waters would decrease federal dollars the state receives for recreational programs.

*Response:* The Federal Aid in Sportfish Restoration grant program allocates grant funds to states based on a formula that includes the land and water area of the state and the number of licensed anglers. It is not based on whether fishing activities based in a state occur in state or federal waters. The registry rule should not affect a state's grant share under this program.

*Comment 102:* NMFS should assist states in accessing databases that will help update lifetime license holder data.

*Response:* NMFS intends to provide such assistance to states in the future.

*Comment 103:* NMFS should commit to the states that it will not require additional data to retain exempted state designation for a period of five years.

*Response:* Any additional substantive data requirements would require an amendment to the final rule. NMFS believes it is necessary to preserve options for future data improvements, and that the rulemaking process sufficiently preserves the states' interests in this regard.

*Comment 104:* Registrants should be able to re-enter the registration system and update their address and telephone information.

*Response:* NMFS will consider enabling updates in the registration system as it is developed. However, this operational measure does not need to be included in the rule.

#### *Comments on NEPA Categorical Exclusion*

*Comment 105:* The rule should not be categorically excluded from NEPA. The intent of the rule is to modify the human environment by modifying human behavior.

*Response:* The intent of the rule is not to modify human behavior. The intent of the rule is solely to develop a complete database of persons and for-hire vessels who are angling and spear fishing in marine and estuarine waters in order to improve surveys that

estimate the catch and effort in these fisheries. Accordingly, NMFS has concluded that the action is categorically excluded from NEPA review.

#### *Comments Related to Adoption of Saltwater Licenses by States*

*Comment 106:* Several comments offered opinions regarding how state license fees should be set: states should charge lower fees for shore fishing; there should be a single license/fee for both fresh and salt water fishing; add an anadromous fishing stamp at a low fee to the state license.

*Response:* The fees charged by states for fishing licenses are beyond the scope of this rulemaking.

*Comment 107:* There should be a single federal fishing license applicable to all salt water fishing.

*Response:* Section 401(g) of the MSA requires NMFS to establish a registry program for recreational fishermen fishing in the EEZ, fishing for anadromous species, and fishing for continental shelf fishery resources. In general, states have authority to manage fisheries, including issuing licenses, within three (in some cases, nine) miles from shore.

*Comment 108:* Comments object to having to purchase a license in multiple states. State licenses should provide for reciprocal fishing privileges among all states or among states in a given region.

*Response:* This comment is beyond the scope of this rulemaking. The final rule does not prevent a state that allows license reciprocity with other states from being designated as an exempted state.

*Comment 109:* If a state opts out of the registry program, it should be required to honor federal registration or other states' licenses.

*Response:* A state would "opt out" of the registry program by failing to qualify or apply for exempted state designation. If such a state required a license in its waters, that license requirement would not be affected by the rule.

#### *Comments on Fishery Management Issues*

*Comment 110:* Will federal registrants be subject to the fishing regulations in the waters in which they are fishing?

*Response:* Federal registrants must comply with all applicable state and federal fishing regulations wherever they are fishing or in possession of fish. The federal registration does not waive or supersede any other fishery regulation.

*Comment 111:* Will NMFS maintain the current federal permits required in certain for-hire fisheries?

*Response:* Certain for-hire fisheries have established permitting requirements pursuant to regulations implementing federal Fishery Management Plans. Those permitting regulations are independent of the registration requirement and must be complied with even if a vessel has registered pursuant to this rule. However, the final rule does not require most for-hire vessels that hold another NMFS-issued permit to register (see § 600.1405(b)(4)).

*Comment 112:* The rule should make it clear that the registry will not be used to restrict or limit future access to fisheries.

*Response:* NMFS intends to use the registry for the purpose stated in the proposed rule and in the Paperwork Reduction Act filing prepared for the rule.

*Comment 113:* A number of comments addressed how marine fisheries are managed (e.g. states should have more uniform regulations; commercial fisheries should be more restricted).

*Response:* Fisheries management actions are beyond the scope of the rule.

#### *Comments Related to Enforcement*

*Comment 114:* NMFS should explain how the production-on-demand requirement will improve surveys.

*Response:* The production-on-demand requirements are intended to facilitate enforcement of the registration requirement by authorized officers, not to improve surveys. The term "authorized officer" does not apply to persons who conduct surveys, and survey interviewers will not be legally empowered to require persons to produce proof of registration.

*Comment 115:* The federal government cannot effectively enforce a universal registration requirement.

*Response:* NMFS will develop and execute an enforcement strategy for the registration requirement that will utilize the NMFS Office for Law Enforcement, the U.S. Coast Guard and the state marine enforcement agencies with which NMFS maintains Joint Enforcement Agreements to appropriately and effectively enforce the registration requirement.

*Comment 116:* Non-anglers may register and corrupt survey data.

*Response:* NMFS believes this is very unlikely to occur.

*Comment 117:* If licenses or federal registration is required, the requirement should be fully enforced in consideration of those who comply.

*Response:* NMFS intends to work with its enforcement partners in the U.S. Coast Guard and the states to

effectively enforce the registration requirement.

*Comment 118:* Penalty provisions should be specified in the rule.

*Response:* Penalties for violating provisions of the MSA are stated in the act, and in the NOAA Civil Monetary Penalty Schedule.

#### *Comments Regarding Timing of Implementation of the Rule*

*Comment 119:* In those states that do not currently license or register anglers, or which have exceptions to their license requirements that will preclude designation as exempted states, the state legislatures must pass legislation that adopts the changes necessary for the states to qualify for exempted state designation. The state legislatures will not have time to introduce and pass legislation that conforms to the requirements of the final rule in the brief period between the time the final rule is adopted and the January, 2009, implementation of the federal registration requirement. Several states request that NMFS delay the implementation date of the registration requirement for a sufficient period to enable their legislatures to pass the necessary legislation.

*Response:* NMFS believes that it is essential to work toward use of complete state license or registry data rather than a federal registration database. Accordingly, NMFS fully supports the efforts of states to adopt saltwater licenses or registries, and to eliminate significant exceptions to state license requirements. NMFS will therefore delay the implementation of the requirement for individuals and for-hire vessels to register with NMFS until January 1, 2010, to provide states with the time required to enact the necessary measures. Section 600.1405 of the final rule sets January 1, 2010, as the effective date of the angler and for-hire vessel federal registration requirement.

*Comment 120:* More detail is needed regarding the timing of exempted state designation following adoption of the final rule.

*Response:* The final rule delays implementation of the federal registration requirement for an individual or for-hire vessel in a non-exempted state until January 1, 2010. States may seek exempted state status at any time following adoption of the final rule.

*Comment 121:* NMFS should designate any state that is working in good faith toward adopting a license or registry or toward removing major exemptions as an interim exempted state.

*Response:* NMFS cannot determine objectively what actions would constitute "good faith" in this context. NMFS believes that the most effective and equitable way of giving all the states that need additional time to enact legislation is to provide an additional year in which to do so.

#### **Changes from the Proposed Rule**

The following changes were made in the final rule based on public comment on the proposed rule:

In § 600.1400, Definitions: Dolly varden and sheefish were added to the list of anadromous species; definitions of "Continental shelf fishery resources" and "state" were added consistent with the definitions in the MSA; the definition of "for-hire fishing vessel" was modified to be consistent with the definition of charter fishing in the MSA; a definition of "tidal waters" was added; the definition of "angler" and "spear fishing" were modified such that they apply to angling and spear fishing in tidal waters.

The effective date of the requirement in § 600.1405(a) for persons and for-hire vessels to register with NMFS was changed from January 1, 2009 to January 1, 2010. To conform with that change, the date by which an exempted state must submit supplemental data under § 600.1416(d) was changed to January 1, 2012, or within two years of the effective date of the Memorandum of Agreement, whichever is later.

Section 600.1405(a) was modified so that angling or spear fishing for salmon, or operating a for-hire vessel when doing so, in inland waters upstream of the extent of tidal waters no longer requires registration with NMFS. The final rule treats angling and spear fishing for salmon consistently with all other anadromous species.

Section 600.1405(b)(8) is added to provide that persons who hold an HMS angling permit under 50 CFR 635.4(c) are not required to register with NMFS.

Section 600.1405(b)(9) is added to provide that persons who hold a state or federal permit to participate in a subsistence fishery program are not required to register with NMFS.

Date of birth is added to the information a registrant must submit and to the data an exempted state will transmit to NMFS about its license holders/registrants.

The following additional information will be included in the Memoranda of Agreement between NMFS and exempted states: identification of the tidal waters of the state within which state license holders/registrants are identified in the state's data submitted to NMFS; states' commitments to

completion of telephone number and date of birth information in their license databases.

In § 600.1416(a), a state seeking exempted state status based on submission of state license-holder data will be required to submit licensees'/registrants' telephone number and date of birth to the extent such data is available in the state's database.

In § 600.1416(b)(2), the reference to § 600.1415(c)(4)(i) was changed to § 600.1416(d)(1).

Section 600.1416(b)(4) is modified to clarify that licensed fishing piers are those licensed by a state and to provide that state license exceptions for such piers may be accepted only if the license-holder submits to the state complete angler contact information or angler effort information for users of the pier.

The deadline for an exempted state to submit angler identification data under § 600.1415(d) is changed from Jan 1, 2011 or within two years of the effective date of the MOA, whichever is later, to be January 1, 2012, or within two years of the effective date of the MOA to be consistent with the one year delay in the federal registration requirement.

The provisions relating to requirements for exempted state designation based on a state's participation in a regional survey of recreational fishing catch and effort in § 600.1417 were modified as follows: state proposals need not be submitted annually; the qualifying regions were changed to split the western Pacific into two regions, one for Hawaii and one for the western Pacific U.S. territories and Commonwealths; a qualifying survey must include all of the states within a defined region; the provision that a survey must include use of angler registries was modified to allow for use of other approved methods to collect effort data and to require use of angler registries if a telephone survey is a component of a regional survey.

In addition to the changes made in response to public comment as described above, NMFS made two additional changes in the final rule. The words "or to be registered to fish" were added to § 600.1405(b)(3). This addition is included to ensure that, if an exempted state registers anglers rather than licensing them, those anglers who are not required by the state to register would not be required to register with NMFS.

Section 600.1405(b)(10) is added to provide that U. S. based vessels, anglers and spear fishers who are fishing in waters under the control of a foreign nation are not required to register with NMFS. This change is added to clarify

the applicability of the rule to U.S. vessels or persons fishing in waters of a foreign nation.

### Classification

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

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0578.

The 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, date of birth, 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, date of birth, telephone number, vessel name and state registration or U.S. Coast Guard documentation number, and home port or principal operating area.

There were three comments regarding the PRA submission and NMFS responds as follows:

*Comment 1:* The public burden hours estimate is low. The telephone burden is closer to 5–10 minutes. A state license purchased at a store is about a 30 minute transaction.

*Response:* The comment assumes that the burden-hour estimate includes the burden for purchase of a license in exempted states. However, an estimate is required only for the burden associated with the federal registration process. NMFS believes the current estimate is appropriate because it is limited to the on-line and telephone

registration process and does not include the time required for fee payment at this time.

*Comment 2:* The registry rule adds to the burden and complexity of federal regulation of the marine charter boat business. Regulatory requirements should be simplified and streamlined.

*Response:* NMFS believes the registry rule includes measures to minimize the burden on for-hire fishing businesses. First, passengers on licensed for-hire vessels will not be required to register, eliminating the burden to the vessel of checking its customers for licenses. Also, for-hire vessels will only need to register with NMFS if they do not have another federal for-hire permit or license. Last, most states license for-hire vessels and will seek exempted state status for for-hire fishing vessels. NMFS believes very few for-hire vessels would need to comply with a federal registration requirement under the rule.

*Comment 3:* Date of birth should also be collected from registrants.

*Response:* NMFS agrees. Date of birth is added to the information to be provided by registrants. This information will assist in confirming the identity of individual registrants, and will enable NMFS to differentiate anglers within households for future angler-based survey purposes. NMFS does not believe this addition will affect the burden-hours estimate.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

NMFS has determined that implementation of the rule is categorically excluded from the requirement for a NEPA review. The 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 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 action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. Two comments were received regarding the certification and the factual basis for it. NMFS responds to those comments here:

*Comment 1:* Privately-owned fishing piers are small entities that may be affected by the rule.

*Response:* While they may be indirectly affected, privately-owned fishing pier owners/operators will not be required to register pursuant to the rule and there are no compliance requirements applicable to them.

*Comment 2:* The commenter challenges both the estimated revenue and the .03% revenue “cost” of the \$25 fee with respect to for-hire vessels and asserts that the (up to) \$25 registration fee would actually come from the owner’s income, not “corporate sales”, since most for-hire vessels are owner operated.

*Response:* NMFS believes that the .03 % impact is correct given our estimate of average annual revenue. Since NMFS does not have financial statements or tax returns from each individual vessel, it cannot estimate profit margins (return to owners) for all vessels involved. If, for example, NMFS used a very low assumed profit margin of 10 %, then the \$ 25 cost of the permit expressed as a percentage of gross profits would still be a minimal 0.30 %.

NMFS believes the basis of its estimation of revenue is appropriate.

The above comments received did not cause NMFS to change its determination regarding the certification. As a result, initial and final regulatory flexibility analyses were not prepared.

NMFS received additional comments regarding the economic effect of the proposed rule that were not specifically related to the Regulatory Flexibility Act Analysis. Those comments are responded to in the Comments and Responses above.

### List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Statistics.

Dated: December 22, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS adds 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.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings. For purposes of this subpart, if applicable, the terms used in this subpart supersede those used in § 600.10.

(a) *Anadromous species* means the following:

American shad: *Alosa sapidissima*  
 Blueback herring: *Alosa aestivalis*  
 Alewife: *Alosa pseudoharengus*  
 Hickory shad: *Alosa mediocris*  
 Alabama shad: *Alosa alabamiae*  
 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*  
 Dolly varden: *Salvelinus malma*  
 Sheefish or inconnu: *Stenodus leucichthys*  
 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) in tidal waters.

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

(d) *Continental shelf fishery resources* has the same meaning as in 16 U.S.C. 1802.

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

(f) *For-hire fishing vessel* means a vessel on which passengers are carried

to engage in angling or spear fishing, from whom a consideration is contributed as a condition of such carriage, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person having an interest in the vessel.

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

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

(i) *State* has the same meaning as in 16 U. S. C. 1802.

(j) *Tidal waters* means waters that lie below mean high water and seaward of the first upstream obstruction or barrier to tidal action and that are subject to the ebb and flow of the astronomical tides under ordinary conditions.

#### § 600.1405 Angler registration.

(a) Effective January 1, 2010, 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; or
- (iii) 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; or
- (ii) 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; or
- (iii) 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 of this part;

(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, or to be registered to fish, 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;

(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;

(8) Holds an HMS Angling permit under 50 CFR 635.4(c);

(9) Holds a subsistence 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; or

(10) Is angling or spearfishing for, or operating a for-hire fishing vessel that engages in fishing for, anadromous species or Continental Shelf fishery resources, in waters under the control of a foreign nation.

(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)(10).

#### § 600.1410 Registry process.

(a) A person may register through the NMFS web site at [www.nmfs.noaa.gov](http://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; date of birth; region(s) of the country in which they intend to fish in the upcoming year; and additional information necessary for the issuance or administration of the registration.

(c) To register a for-hire fishing vessel, the vessel owner or operator must submit vessel owner name, address, date of birth, and telephone number; vessel operator (if different) name, address, date of birth and telephone number; vessel name; vessel's state registration or U.S. Coast Guard documentation number; home port or principal area of operation; and additional information necessary for the issuance or administration of the registration.

(d) NMFS will issue a registration number and certificate to registrants. A

registration number and certificate will be valid for one year from the date on which it is issued.

(e) It shall be unlawful for any person to submit false, inaccurate or misleading information in connection with any registration request.

(f) Fees. Effective January 1, 2011, persons registering with NMFS must pay an annual fee. The annual schedule for such fees will be published in the Federal Register. Indigenous people engaging in angling or spear fishing must register, but are not required to pay a fee.

**§ 600.1415 Procedures for designating exempted states-general provisions.**

(a) States with an exempted state designation must:

(1) Submit state angler and for-hire vessel license holder data to NMFS for inclusion in a national or regional registry database; or

(2) Participate in regional surveys of recreational catch and effort and make the data from those surveys available to NMFS.

(b) Process for getting an exempted state designation:

(1) To apply for exempted state designation, a state must submit:

(i) A complete description of the data it intends to submit to NMFS;

(ii) An assessment of how the data conforms to the requirements of §§ 600.1416 or 600.1417;

(iii) A description of the database in which the data exists and will be transmitted; and

(iv) The proposed process, schedule and frequency of submission of the data.

(2) If NMFS determines the submitted material meets the requirements of §§ 600.1416 or 600.1417, NMFS will initiate negotiations with the state on a Memorandum of Agreement. The Memorandum of Agreement must include the terms and conditions of the data-sharing program. The Memorandum of Agreement and state designation may be limited to data-sharing related to only anglers or only for-hire fishing vessels.

(3) Following execution of a Memorandum of Agreement, NMFS will publish a notice of the exempted state designation in the **Federal Register**.

**§ 600.1416 Requirements for exempted state designation based on submission of state license holder data.**

(a) A state must annually submit to NMFS, in a format consistent with NMFS guidelines, the name, address and, to the extent available in the state's database, telephone number and date of birth of all persons and for-hire vessels and for-hire vessel operators who are

licensed to fish, or who are registered as fishing, in the EEZ, in the tidal waters of the state, or for anadromous species.

The Memorandum of Agreement will specify the timetable for a state to compile and submit complete information on the telephone numbers and dates of birth for its license holders/registrants. The waters of the state for which such license-holder data must be submitted will be specified in the Memorandum of Agreement.

(b) A state is eligible to be designated as an exempted state even if its licensing program excludes anglers who are:

- (1) Under 16 years of age;
- (2) Over age 59 (see § 600.1416(d)(1));
- (3) Customers on licensed for-hire vessels;

(4) Customers on state-licensed fishing piers, provided that the pier license holder provides to the state complete angler contact information or angler effort information for users of the pier;

- (5) On active military duty while on furlough; or
- (6) Disabled or a disabled Veteran as defined by the state.

(c) Unless the state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample, a state may not be designated as an exempted state if its licensing program excludes anglers that meet any of the following conditions:

- (1) Fishing on a state-licensed private vessel;
- (2) Fishing from privately-owned land;
- (3) Fishing on a public pier;
- (4) Fishing from shore;
- (5) Fishing in tidal waters of the state;

or

(6) Fishing as an occupant of a beach buggy, the operator of which is licensed or permitted to operate the vehicle on public beaches.

(d) Required enhancements to exempted state license-holder data. An exempted state must submit the following angler identification data by Jan. 1, 2012, or within two years of the effective date of the Memorandum of Agreement, whichever is later, and thereafter in accordance with the Memorandum of Agreement:

- (1) Name, address and telephone number of excluded anglers over age 59;
- (2) Name, address and telephone number, updated annually, of holders of state lifetime and multi-year licenses;
- (3) Name, address and telephone number of state combination license holders who fished in tidal waters in the prior year, or who intend to fish in tidal

waters. The Memorandum of Agreement will define the boundaries of the state's tidal waters for this purpose.

**§ 600.1417 Requirements for exempted state designation based on submission of recreational survey data.**

(a) To be designated as an exempted state based on the state's participation in a regional survey of marine and anadromous recreational fishing catch and effort, a state may submit to NMFS a proposal that fully describes the state's participation in a qualifying regional survey, and the survey's sample design, data collection and availability.

(b) A qualifying regional survey must:

(1) Include all of the states within each region as follows:

(i) Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida (Atlantic coast);

(ii) Florida (Gulf of Mexico coast), Alabama, Mississippi, Louisiana, and Texas;

(iii) Puerto Rico and the U. S. Virgin Islands;

(iv) California, Oregon and Washington;

(v) Alaska;

(vi) Hawaii; or

(vii) American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

(2) Utilize angler registry data, or direct field counts to obtain angler effort, or other appropriate statistical means to obtain fishing effort;

(3) Utilize angler registry data to identify individuals to be surveyed by telephone, if such regional survey includes a telephone survey component; and

(4) Meet NMFS survey design and data collection standards.

[FR Doc. E8-31021 Filed 12-29-08; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 061228342-7068-02]

RIN 0648-XM38

**Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1B**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and