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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080226308-81499-01]

RIN 0648-AW50

Fisheries Off West Coast States; Highly Migratory Species Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to initiate collection of a permit fee for vessel owners participating in commercial and charter recreational fishing for highly migratory species (HMS) in the Exclusive Economic Zone (EEZ) off the West Coast of California, Oregon, and Washington. The HMS permits are issued under implementing regulations for the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP).
DATES: Comments must be received by January 20, 2009.

ADDRESSES: You may submit comments, identified by 0648-AW50, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: 562-980-4047, Attn: Chris Fanning, Permits Coordinator.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 4213.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Rodney R. McInnis at the address listed above and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT:

Chris Fanning, Permits Coordinator, Sustainable Fisheries Division, NMFS, 562-980-4198.

SUPPLEMENTARY INFORMATION: On April 7, 2004, NMFS published a final rule to implement the HMS FMP (69 FR 18444) that included mandatory permit requirements at 50 CFR 660.707. At the time, there was no cost passed on to the vessel owners for the preparation and issuance of the permit. NMFS now proposes to charge an administrative fee for the recovery of HMS permit processing and issuance expenses. NMFS initiates rulemaking for this action pursuant to procedures established at 50 CFR 660.717(d) of the implementing regulations for the HMS FMP.

This proposed rule would specify that an application for an HMS permit, including the renewal of an existing permit, would include a fee payable by the vessel owner. The fee amount required will be determined in accordance with the NOAA Finance Handbook available at (<http://www.corporateservices.noaa.gov/~finance/FinanceHandbook.htm>) and specified on the application form. The fee amount is expected to be approximately \$30-\$40 at this time.

Background

Section 303(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1853(b)(1), authorizes the inclusion of a requirement for permit fees in fishery management plans. Section 304(d) of the MSA specifies that such fees may not exceed the administrative costs of issuing the permits. Historically, only some fishery management plans have authorized the collection of permit fees, resulting in a set of inconsistent permit fee policies around the country. NMFS has issued a policy directive (No. 30-120, effective January 3, 2005 and renewed in 2007) to establish a more consistent agency permit program that recovers the expense of permit processing and issuance for all permits issued by NMFS to the extent authorized by law. Policy directive No. 30-120 is available at: <http://www.nmfs.noaa.gov/directives/>.

In this case, the original Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species, as approved by NOAA in 2004, already included authority to collect permit fees. NMFS proposes to exercise this authority through this rulemaking.

Classification

NMFS has determined that this proposed rule is consistent with the HMS FMP and preliminarily determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws, subject to public review and comment.

Information collection requirements for HMS Permits have been previously approved by OMB under the Southwest Region Family of Forms (OMB Control Number 0648-0204). This approval is valid through April 30, 2010. An amendment to this approved collection of information has been submitted and is undergoing review by OMB. The amendment would incorporate the permit fee collection component of this proposed rule, if finalized. Public reporting burden for the payment of HMS permit fees is estimated to average 5 minutes or less per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

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

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

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

Approximately 1,772 HMS commercial and recreational charter vessels were permitted under the HMS FMP to operate off the U.S. West Coast in 2007, the most recent year for which annual data are available. These vessels are considered small business entities under NAICS Code 114111 with annual per vessel revenues under \$4,000,000. Ex-vessel revenue for HMS landings on the West Coast in 2007 was approximately \$21,000,000 which equates to an average of approximately \$11,000 per vessel. The anticipated permit fee amount would be a very minor

component of these vessels annual operating expenses which are estimated to be in the tens of thousands of dollars.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 15, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. A new paragraph (e) is added to § 660.707 to read as follows:

§ 660.707 Permits.

* * * * *

(e) *Fees.* An application for a permit, or renewal of an existing permit under paragraph (b)(1) of this section will include a fee for each vessel. The fee amount required will be calculated in accordance with the NOAA Finance Handbook and specified on the application form.

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