

26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V-72 [Revised]

From Razorback, AR, Dogwood, MO; INT Dogwood 052° and Maples, MO, 230° radials; Maples; Farmington, MO; Centralia, IL; Bible Grove, IL; Mattoon, IL; to Bloomington, IL. From Rosewood, OH; Mansfield, OH; INT Mansfield 098° and Akron, OH, 233° radials; Akron; Youngstown, OH; Tidioute, PA; Bradford, PA; INT Bradford 078° and Elmira, NY, 252° radials; Elmira; Binghamton, NY; Rockdale, NY; Albany, NY; Cambridge, NY; INT Cambridge 063° and Lebanon, NH, 214° radials; to Lebanon.

* * * * *

V-289 [Revised]

From Beaumont, TX; INT Beaumont 323° and Lufkin, TX, 161° radials; Lufkin; Gregg County, TX; Texarkana, AR; Fort Smith, AR; Harrison, AR; Dogwood, MO; INT Dogwood 052° and Maples, MO, 230° radials; INT Maples 230° and Vichy, MO, 198° radials; to Vichy. The airspace within R-4501A, R-4501B, R-4501C and R-4501D is excluded during their time of activation.

* * * * *

Issued in Washington, DC, on January 6, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03-919 Filed 1-15-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 020816198-2315-02; I.D. 071202A]

RIN 0648-AP41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States; Amendment 5

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States (FMP). This final rule establishes a limited access program for the rock shrimp fishery in the exclusive economic zone (EEZ) off Georgia and off the east coast of Florida (limited access area), establishes a minimum mesh size for a rock shrimp trawl net in the

limited access area, requires the use of an approved vessel monitoring system (VMS) by vessels allowed to fish for rock shrimp in the limited access program, and requires an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida) to have an operator permit. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effects of this final rule are to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres (8 hectares) of intact *Oculina* coral remaining in the world; and ensure the long-term economic viability of the rock shrimp industry.

DATES: This final rule is effective February 18, 2003.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this final rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge; phone: 727-570-5305; fax: 727-570-5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The shrimp fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved Amendment 5 on October 23, 2002. NMFS published a proposed rule to implement Amendment 5 and requested comments on the proposed rule through October 21, 2002 (67 FR 56516, September 4, 2002). The rationale for the measures in

Amendment 5 is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received seven comments, from three individuals and the Council, on the proposed rule (67 FR 56516, September 4, 2002). A summary of the comments received and NMFS' responses follows.

Comment 1: A vessel owner reported that she had fished for rock shrimp in the 1980's and helped to build the market for rock shrimp. She believes that she should be eligible for a permit even though she did not meet the eligibility requirements.

Response: The public was notified on April 4, 1994, that the South Atlantic Council was considering a limited access program for the rock shrimp fishery and that anyone entering the fishery after April 4, 1994, might not be assured of future participation in the fishery if a limited entry management regime were implemented. Since then, there is evidence that the fishery has become overcapitalized. For example, although the current estimate for optimum yield is 6.83 million lb (3.10 million kg), as many as 400 vessels have obtained a rock shrimp permit. The Advisory Panel of the Council believes that the fishery can support, at most, no more than 150 vessels, and it is evident that a much smaller number of vessels could take the annual harvest in most years. For these reasons, the Council limited access to the fishery to participants who could demonstrate that they had landed at least 15,000 lb (6,804 kg) of rock shrimp in any one calendar year between 1996 and 2000.

Comment 2: One fisherman and one vessel owner opposed the VMS requirement. They believe that the government should pay for the VMS system and that the VMS system was not needed. Also, they reported that they wanted to split trips between rock and penaeid shrimp without having to unload their rock shrimp catch before they could fish for penaeid "soft" shrimp.

Response: There is considerable evidence that illegal trawling by rock shrimp vessels has resulted in extensive damage to *Oculina* habitat. Further, national standard 9 of the Magnuson-Stevens Act requires that conservation and management measures shall, to the extent practicable, minimize bycatch. The use of an approved VMS will minimize inadvertent, as well as deliberate, trawling in protected *Oculina* habitat areas because vessel captains will know precisely the location of protected areas and will be

informed that trawling in such areas is prohibited. It should be noted that vessels with an approved VMS system will be able to split trips between rock and penaeid shrimp trips without having to land either type of shrimp first. The VMS will enable vessel owners to monitor vessel operations which should result in safer and more efficient fishing operations that will benefit the crew as well as the vessel owner.

Comment 3: One fisherman and one vessel owner opposed the limited access program for the rock shrimp fishery. They believe that fishing is a right that all Americans should be able to exercise.

Response: The Magnuson-Stevens Act mandates that fishery resources should be managed on a sustainable basis so that an optimal yield can be obtained. As noted earlier, there is evidence that overcapitalization has occurred in the rock shrimp fishery and, at most, no more than 150 vessels should be allowed to participate in the fishery. It is clear that the rock shrimp resource is limited and that an optimum economic yield is unlikely if open access to the fishery continues. As such, a limited access program is appropriate because it is prudent and reasonable to limit fishing pressure to the level which the resource can support without overfishing and without allowing the cost of fishing to exceed the revenues obtained by selling the catch.

Comment 4: One vessel owner opposed the minimum mesh size requirement.

Response: There is empirical evidence that the use of minimum mesh sizes less than 1 7/8 inches (4.76 cm) will result in an excessive catch of smaller, less valuable shrimp. It is believed that allowing shrimp to grow larger will result in more income to fishermen as well as a more attractive product for consumers. Also, the use of larger mesh should result in less bycatch of juvenile fish and other invertebrates. For this reason, the Council proposed and NMFS approved the 1 7/8-inch (4.76-cm) minimum mesh size.

Comment 5: One vessel owner did not want individuals to have to take a test to obtain a rock shrimp operator permit.

Response: NMFS will not require any performance or competency test to obtain an operator permit.

Comment 6: The Council's Habitat and Environmental Protection and Coral, Coral Reef and Live/Hard Bottom Habitat Advisory Panels endorsed the management measures in Amendment 5, especially the VMS and operator permit requirements and urged that

these measures be implemented as soon as possible.

Response: NMFS agrees.

Comment 7: The Council commented in support of the management measures proposed in Amendment 5.

Response: NMFS agrees.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 5 is necessary for the conservation and management of the South Atlantic rock shrimp fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) that describes the impact this proposed rule, if adopted, would have on small entities. The analysis is summarized as follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objective of the final rule is to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat; and ensure the long-term economic viability of the rock shrimp fishery. The final rule will: establish a limited access program for the rock shrimp fishery in the EEZ off Georgia and off the east coast of Florida (limited access area); establish a minimum mesh size for a rock shrimp trawl net in the limited access area; require the use of an approved VMS by vessels allowed to fish for rock shrimp in the limited access program; and, require an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states to have an operator permit.

No duplicative, overlapping, or conflicting Federal rules have been identified.

No comments were received regarding the economic impact of this final rule.

The number of vessels with permits for the South Atlantic rock shrimp fishery varies from year to year but has not exceeded 431. Since permits were required in the fishery in 1996, at least 540 different vessels have been permitted in the fishery. Similarly, the number of vessels that have landed rock shrimp varies from year to year. In 1996, the number of active vessels reached an historical peak of 153. From 1996 through 2000, at least 279 different vessels have recorded landings of South Atlantic rock shrimp. All of these

vessels are commercial vessels; there is no recreational component of the fishery. All of the commercial vessels that have been permitted in the fishery will be affected by this final rule. Based on the Small Business Administration's current definition of a small entity in the fish harvesting sector (annual gross revenues not exceeding \$3.5 million), the vast majority of these vessels are small entities. One company did own as many as 12 permitted vessels during the 1996–2000 time period. None of these vessels were active in the fishery during these years, and this company had zero landings and gross revenues from the fishery during these years. However, data on the company's operations in other fisheries have led to a determination that this company is a large entity. To maintain confidentiality, additional, detailed information regarding this company's operations cannot be provided.

At least 111 small entities (vessels) that have been active in the fishery are not expected to qualify for the limited access permit and could experience some short-term loss in revenue resulting from limiting access in the South Atlantic rock shrimp fishery off Georgia and Florida. The average loss in gross revenue per vessel would be expected to be no larger than \$1,365 annually in the short term. Vessels that entered the fishery in 2001 could experience higher losses in average revenue, though data are not presently available to make such a determination. However, it is expected that some of these vessels may mitigate this loss by participating in other fisheries. Because information is not available on these vessels' economic dependence on the rock shrimp fishery, it is not possible to calculate the impact of limited access on their profitability. Since the single, large entity earned zero gross revenues from the fishery, no measurable economic impact would be imposed on this entity as a result of this action. Further, this entity would not be subject to other actions only applicable to limited access permit holders, and thus would not be affected by those actions.

For the 168 vessels expected to qualify for limited access permits, each would be required to pay a \$50 fee per permit application. In addition, a time burden would be imposed as a result of having to apply for the limited access permit. The time burden for completing the application is estimated at 20 minutes. According to 2000 data from the Bureau of Labor Statistics, the average hourly wage for first-line supervisors/managers in the fishing, forestry, and farming industries is \$16.72. Thus, the monetary value of this

time burden is \$5.58 per vessel. As a result, the total cost of this action per qualifying vessel is \$55.58, or \$9337 for all qualifying vessels. However, since these permits will be renewed, via application, biannually rather than annually, the total cost per year would be approximately \$27.79. In cases where vessel owners have qualified as the result of a transfer in catch history, documentation would be needed to support a determination of eligibility. The time burden associated with compiling such documentation is estimated at 1 hour, for an additional one-time cost of \$16.72 in the first year. Therefore, for these vessels, the monetary value of the time burden associated with this action is estimated at \$19.51 per vessel. Thus, total annual costs would be \$44.51 in the first year, and \$27.79 in years thereafter.

For vessel owners that do not initially qualify for a limited access permit, two additional opportunities exist to obtain such a permit. Specifically, the vessel owner may submit a request to the RA for reconsideration of an initial determination of non-eligibility. The time burden associated with filing such a request is estimated to be 2 hours. In addition, these vessel owners may submit a request to be placed on a list of those desiring the re-issuance of a permit that was not renewed in a timely manner by an initial qualifier. The time burden associated with filing this request is estimated to be 5 minutes. Thus, the monetary value of these time burdens is \$35 per vessel. Although it is not possible to perfectly predict how many non-qualifiers will submit such requests, those owners whose vessels were active in the fishery but did not qualify are most likely to submit one or both requests. Given that 111 active vessels are not expected to qualify, and since these vessels would have also submitted an application and therefore paid the requisite and non-refundable \$50 fee, the total burden per vessel would be \$85 for all such vessels, or \$9435 in the aggregate.

The final rule is expected to result in lesser impacts than rejected option 2, which would limit eligibility to those who had met the criteria prior to December 31, 1999, rather than December 31, 2000. Rejected option 2 would exclude an additional 26 vessels, most of which were very active in the fishery in 2000, and the average annual short-term revenue loss per active vessel would increase from \$1,365 to \$4,153. Given the possibility of continued entry of new vessels into the fishery and an exacerbation of the current overcapacity problem, the no action option (rejected option 1) is not acceptable. Rejected

option 3 would only enable those who entered the fishery after April 4, 1994, to obtain non-transferable permits. Relative to the final rule, this option is more restrictive on recent participants and was not supported by industry representatives. Also, it is likely that rejected option 3 would not reduce the initial level of overcapacity in the fishery. Based on the objectives of the FMP and the issues being addressed, the final rule is superior to the rejected alternatives.

The minimum mesh size requirement applicable to the limited access area could increase costs for those vessel owners whose gear does not meet the proposed minimum mesh size and who obtain limited access endorsements. The gear replacement cost is expected to be between \$75 and \$80 per net (\$150 to \$320 per vessel). During the 1996–2000 time period, active vessels expected to qualify for a limited access permit earned between \$31,902 and \$127,319 in gross revenues per year from the rock shrimp fishery. These vessels also typically earn revenues from other fisheries, such as the penaeid shrimp fisheries of the South Atlantic and Gulf of Mexico. Since the minimum mesh size is the predominant mesh size presently being used in the fishery, a majority of vessel owners likely will not incur these costs. However, for those owners not presently using the minimum mesh size or larger, the gear modification expense could represent between 0.1 percent and 1 percent of their annual gross revenues from this fishery in the first year.

The final rule will result in gear replacement costs for those vessels that utilize trawl nets with a smaller mesh size. Compared to the no action option, this measure would impose a higher cost on the industry. However, the Council's Rock Shrimp Advisory Panel was of the opinion that the replacement cost for the cod end would be recovered in the future as overall yields increase from allowing recruitment of small shrimp that escape to larger size classes. Also, the time saved from not having to cull many small, unmarketable shrimp in each haul could translate into more tows per trip. In comparison to rejected options 3 and 4, the Advisory Panel felt that the recommended mesh size would be more effective at allowing the escapement of small, unmarketable shrimp than the 1 and 3/4-inch (4.45–cm) mesh size. However, the 2-inch (5–cm) mesh size would allow escapement of a much higher proportion of marketable shrimp compared to this proposed mesh size. Under the assumption that the net replacement cost would be recouped from higher

returns, and the Advisory Panel's recommendation that 1 and 7/8 inches (4.76 cm) is the optimal mesh size for this fishery, the mesh size specified by the final rule is superior to the alternatives considered.

The requirement for an operating VMS would impose a one-time cost to owners who obtain limited access endorsements that would not exceed \$1,200. This capital cost is expected to be amortized over the average life-span of the equipment, presently estimated at 7 years. Thus, the annual cost per vessel is approximately \$171. In addition, there would be some level of recurring operating/repair/maintenance costs, and no more than \$800 in annual communication costs. Therefore, the requirement for an operating VMS would decrease a vessel's annual profitability by approximately \$971. Given the previously noted annual gross revenue estimates, the expected annual explicit cost of the VMS requirement alone could represent between 0.8 percent and 3 percent of these vessels' annual gross revenues from the rock shrimp fishery.

Additionally, time burdens would be imposed as a result of the VMS requirement. Specifically, the time to install the VMS is estimated to be 4 hours; the time to complete and submit a statement certifying compliance with the installation and activation checklist is estimated to be 15 minutes; annual maintenance is estimated to be 2 hours each year; and the time to transmit position reports is estimated to be 14 minutes per day at sea. Current information suggests that the average, annual number of days at sea is approximately 200 for qualifying vessels active in this fishery. As such, this particular time burden is estimated at 2800 minutes or 46.67 hours per vessel. Therefore, the total time burden associated with VMS is approximately 53 hours per vessel in the first year, the monetary value of which is approximately \$883 per vessel. In the years thereafter, only the time burdens associated with annual maintenance and the time to transmit position reports would be incurred. Thus, the time burden per vessel in later years would be 48.67 hours, the monetary value of which is approximately \$813 annually per vessel. By combining the explicit and implicit costs, the total annual cost of this action is \$1854 per vessel in the first year, and \$1784 per vessel in later years, or \$311,472 and \$299,712 annually for all qualifying vessels.

The final rule will likely result in higher costs than rejected option 3, under which only vessels with a past fishery violation would be required to

use VMS, as opposed to all vessels. The use of an approved vessel monitoring system is necessary to protect essential fish habitat and essential fish habitat areas of particular concern. Illegal use of rock shrimp trawls within the Oculina Bank can result in damage to bottom habitat, as emphasized in a recent report presented to the Council on this topic. This latest report indicates that only 20 acres of Oculina coral remain intact, not only in this area, but in the world. Requiring rock shrimp vessels to carry an approved VMS unit will improve compliance and allow the rock shrimp fishermen to demonstrate that they are not fishing in any closed areas. Currently, the probability of detecting fishing in the Oculina Bank HAPC is low, given the distance from shore and the frequency of Coast Guard patrols in this area. VMS technology will significantly improve the detection of fishery violations in this closed area. Thus, the final rule is superior to the no action option and rejected option 3. Rejected option 3 would only provide coverage for some vessels in the industry and would not be as effective as the preferred alternative in improving compliance. In comparison to rejected option 2, the VMS system requirements should be specified in order to ensure that the utilized system will ensure sufficient surveillance of vessel activities. In this respect, the final rule is preferable to rejected option 2. Also, the final rule establishes a cap on the cost per vessel for purchase of the VMS unit and annual communications. Based on these facts, the final rule is superior to the alternatives considered.

The requirement for operator permits in the South Atlantic rock shrimp fishery will increase costs to owners who operate their own vessels and to individual non-owning operators. The cost of a permit is expected to be not more than \$50 and would generally be incurred once every 3 years, for an approximate cost per year of \$16.67. Thus, the total explicit cost imposed on all qualifiers combined in the first year would be approximately \$8400. The time burden of applying for this permit is estimated to be 60 minutes. In monetary terms, this time burden equates to \$8.36 per vessel operator, or \$2.79 per year. As a result of this action, the annual total cost per qualifying vessel is \$19.46, or \$3270 for all qualifying vessels.

This burden would also be imposed on vessel operators in the open access component of the fishery (i.e., the Carolinas), which could consist of as many as 24 additional vessels. If the single, large entity eventually chose to participate in the open access

component of the fishery, it would also have to incur these expenses. Since the cost is constant on a per-vessel basis, disproportional impacts would not occur. In any case, for participants in the open access component of the fishery, these costs are unlikely to substantially reduce profitability.

The final rule will result in higher costs than the no action option (rejected option 1) since it would require an operator's permit, estimated to cost \$50 per operator, that would be valid for 3 years. The Council's Rock Shrimp Advisory Panel recommended operator permits to assist in reducing the cost of penalties to the industry from federal fishery management violations. It is expected that an operator's permit requirement will improve compliance with fisheries management regulations. Even though rejected option 2, which only requires an operator's permit for captains who do not own the vessel they operate, would result in a lower cost to the industry, it would not eliminate the possibility that a vessel owner who had a vessel permit sanction for a federal fishery violation could obtain an operator's permit and work onboard another rock shrimp vessel. Thus, the final rule is preferable to the rejected alternatives.

Overall, the total costs of these actions on active, non-qualifying vessels could be as high or higher than \$1450 per vessel, or \$160,950 in the aggregate, in the short-term. Depending on circumstances, these vessels may or may not mitigate these losses by participating in other fisheries.

For the vessel owners who qualify for a limited access permit, the total annual costs of these actions could be as high as \$2238 per vessel in the first year, and \$1831 thereafter. Given that active vessels expected to qualify for a limited access permit earned between \$31,902 and \$127,319 in gross revenues per year from the rock shrimp fishery, such costs could represent between 1.8 percent and 7.0 percent of these revenues in the first year, and between 1.4 percent and 5.7 percent in years thereafter. Depending on the profit margins associated with activity in this fishery, these losses could be considered substantial, at least for some of the affected small entities. However, it is expected that future gains in the fishery would offset the short-term costs to these small entities. The Council's industry representatives (Rock Shrimp Advisory Panel) recommended that the Council consider a limited access program to avoid a situation where the current overcapacity problem, the primary source of which is the large number of latent permits, is exacerbated and thus increases the risk that firms

dependent on rock shrimp could be forced out of the fishery or out of business. The Rock Shrimp Advisory Panel requested operator's permits to protect their interests since many owners do not operate their own vessels, and this measure would allow them to hire captains who are likely to be more compliant with fishery regulations. Vessel owners are also liable for any fishery violations even if they are not on board the vessel during the period when the infraction occurs; however, this is true regardless of operator permits. There have been a number of instances of illegal fishing in an important closed fishing area, the Oculina Bank HAPC, by vessels in the rock shrimp fishery. Given the dwindling law enforcement resources for patrolling these areas, which are several miles offshore, the Council recommended that vessels in this fishery be required to use an approved VMS since they regularly operate in close proximity to the Oculina Bank HAPC. There is a critical need to implement this measure for increased protection of the *Oculina* coral habitat. A recently completed research survey concluded that this area contains the last 20 acres (8 hectares) of intact *Oculina* coral remaining in the world. To the extent enforcement is increased and trawling in the Oculina Bank HAPC is eliminated, there will be corresponding benefits in terms of protecting *Oculina* coral, habitat, and juvenile rock shrimp.

Copies of the FRFA are available upon request (see ADDRESSES).

The Council prepared a final supplemental environmental impact statement (FEIS) for Amendment 5; a notice of availability was published on September 6, 2002 (67 FR 57007). The FEIS concludes that Amendment 5 will result in positive environmental impacts by reducing excess harvesting capacity in the fishery via the limited access program, reducing bycatch (including bycatch of undersized, unmarketable rock shrimp) via mesh size restrictions, and enhancing compliance with all management measures (including protection of the essential fish habitat and *Oculina* coral) via requirements for VMS and operator permits.

This final rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA)--namely, application for a limited access endorsement for the South Atlantic rock shrimp fishery, documentation of eligibility through a written agreement, transfer of a limited access endorsement, installation and operation of a VMS by a vessel that has been issued a limited access

endorsement, and application for an operator permit for the South Atlantic rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida). These collection-of-information requirements have been approved by OMB, OMB control number 0648-0205. The average public reporting burdens are estimated as follows: For the limited access endorsement, 20 minutes for each application for the endorsement or for the transfer of an endorsement, 1 hour for documentation of eligibility submitted with the application, 2 hours for each request for reconsideration of the RA's determination regarding initial endorsement eligibility, and 5 minutes for each request to be placed on the list of owners desiring consideration for reissue of an endorsement that had not been renewed; for the VMS, 4 hours per installation, 15 minutes for completion and submission of the statement certifying compliance with the installation and activation checklist, 14 minutes per day at sea for transmittal of position reports, and 2 hours for annual maintenance; and for the operator permit, 60 minutes for each application.

The estimates of public reporting burdens for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of the collections of information to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a 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.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 10, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b), under 50 CFR, is amended by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *
(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
50 CFR	* * * * *
622.9	-0205
622.19	-0205
	* * * * *

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

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

4. In § 622.4, paragraph (a)(2)(viii), (c), (f) through (j), and (l) are revised and paragraphs (a)(5) and (b)(4) are added to read as follows:

§ 622.4 Permits and fees.

(a) * * *
(2) * * *

(viii) *South Atlantic rock shrimp.* (A) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board. (See paragraph (a)(5) of this section for the requirements for operator permits for the South Atlantic rock shrimp fishery.)

(B) In addition, effective July 15, 2003, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or

from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board. See § 622.19 for limitations on the issuance, transfer, renewal, and reissuance of a limited access endorsement for South Atlantic rock shrimp.

* * * * *

(5) *Operator permits.* (i) Effective May 16, 2003, for a person to be an operator of a vessel fishing for rock shrimp in the South Atlantic EEZ or possessing rock shrimp in or from the South Atlantic EEZ, or to be an operator of a vessel that has a valid permit for South Atlantic rock shrimp issued under this section, such person must have and carry on board a valid operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(ii) An owner of a vessel that fishes for rock shrimp in the South Atlantic EEZ or possesses rock shrimp in or from the South Atlantic EEZ, and an owner of a vessel that has a valid permit for rock shrimp issued under this section, must ensure that at least one person with a valid operator permit for the South Atlantic rock shrimp fishery is aboard while the vessel is at sea or offloading.

(b) * * *

(4) *Operator permits.* An applicant for an operator permit must provide the following:

(i) Name, address, telephone number, and other identifying information specified on the application.

(ii) Two recent (no more than 1-year old), color, passport-size photographs.

(iii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(c) *Change in application information.* The owner or operator of a vessel with a permit, a person with a coral permit, a person with an operator permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

* * * * *

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or, in the case of a vessel or dealer permit, the vessel or dealership is sold.

(g) *Transfer—(1) Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit issued

under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Operator permits.* An operator permit is not transferable.

(h) *Renewal—(1) Vessel permits, licenses, and endorsements and dealer permits.* Although a vessel permit, license, or endorsement or a dealer permit required by this section is issued on an annual basis, an application for its renewal is required only every 2 years. In the interim years, renewal is automatic (without application) for a vessel owner or a dealer who has met the specific requirements for the requested permit, license, or endorsement; who has submitted all reports required under the Magnuson-Stevens Act; and who is not subject to a sanction or denial under paragraph (j) of this section. An owner or dealer whose permit, license, or endorsement is expiring will be mailed a notification by the RA approximately 2 months prior to its expiration. That notification will advise the status of the renewal. That is, the notification will advise that the renewal will be issued without further action by the owner or dealer (automatic renewal); that the permit, license, or endorsement is ineligible for automatic renewal; or that a new application is required.

(i) *If eligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is eligible for automatic renewal, the RA will mail the automatically renewed permit, license,

or endorsement approximately 1 month prior to expiration of the old permit, license, or endorsement.

(ii) *If ineligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the notification will specify the reasons and will provide an opportunity for correction of any deficiencies. If the owner or dealer does not correct such deficiencies within 60 days after the date of the RA's notification, the renewal will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iii) *If new application is required.* If the RA's notification indicates that a new application is required, the notification will include a preprinted renewal application. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iv) *If notification is not received.* A vessel owner or dealer must contact the RA if he/she does not receive a notification from the RA regarding status of renewal of a permit, license, or endorsement by 45 days prior to expiration of the current permit.

(2) *Operator permits.* An operator permit required by this section is issued for a period not longer than 3 years. A permit not renewed immediately upon its expiration would expire at the end of the operator's birth month that is between 2 and 3 years after issuance. For renewal, a new application must be submitted in accordance with paragraph (b)(4) of this section.

(i) *Display.* A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the vessel permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer. An operator of a vessel in the South Atlantic rock shrimp fishery must present his/her operator

permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* (1) A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(2) A person whose operator permit is suspended, revoked, or modified may not be aboard any fishing vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. The vessel's owner and operator are responsible for compliance with this measure. A list of operators whose permits are revoked or suspended may be obtained from the RA.

* * * * *

(l) *Replacement.* A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application. An application for a replacement operator permit must include two new photographs, as specified in paragraph (b)(4)(ii) of this section.

* * * * *

5. In § 622.7, paragraphs (b) and (c) are revised and paragraph (bb) through (ee) are added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), (q), or (r) or in §§ 622.18 or 622.19.

(c) Fail to display a permit, license, or endorsement, or other required identification, as specified in § 622.4(i).

* * * * *

(bb) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a vessel monitoring system (VMS) unit or communication service provider.

(cc) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in § 622.4(a)(5)(i) and (ii).

(dd) When a vessel that is subject to Federal fishing regulations is at sea or offloading, own or operate such vessel with a person aboard whose operator

permit is revoked, suspended, or modified.

(ee) Fail to comply with any provision related to a vessel monitoring system as specified in § 622.9, including but not limited to, requirements for use, installation, activation, access to data, procedures related to interruption of VMS operation, and prohibitions on interference with the VMS.

6. In subpart A, § 622.9 is added to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) *Requirement for use.* As of October 14, 2003 or 90 days after NMFS publishes in the **Federal Register**, the list of approved transmitting units and associated communications service providers, whichever is later, an owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp must ensure that such vessel has a NMFS-approved, operating VMS on board when on a trip in the South Atlantic. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by NMFS for use in the South Atlantic rock shrimp fishery may be used. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on an installation and activation checklist, which is available from NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL; phone: 727-570-5344; and

(2) Submit to NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not

limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of South Atlantic rock shrimp in or from the South Atlantic EEZ, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

7. In subpart B, § 622.19 is added to read as follows:

§ 622.19 South Atlantic rock shrimp limited access.

(a) *Applicability.* Effective July 15, 2003, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board.

(b) *Initial eligibility.* A vessel is eligible for an initial limited access endorsement for South Atlantic rock shrimp if the owner—

(1) Owned a vessel with a Federal permit for South Atlantic rock shrimp on or before December 31, 2000, and

(2) Landed at least 15,000 lbs (6,804 kg) of South Atlantic rock shrimp in any one of the calendar years 1996 through 2000 from a vessel that he/she owned.

(c) *Determinations of eligibility—(1) Permit history.* The sole basis for determining whether a vessel had a Federal permit for South Atlantic rock shrimp, and that vessel's owner during the time it was permitted, is the RA's permit records. A person who believes he/she meets the permit history

criterion based on ownership of a vessel under a different name, as may have occurred when ownership changed from individual to corporate or vice versa, must document his/her ownership.

(2) *Landings.* (i) Landings of rock shrimp from the South Atlantic EEZ during the qualifying period are verified from landings data that were submitted on or before January 31, 2001 and are in state or Federal database systems; no additional landings data will be accepted.

(ii) Only landings when a vessel had a valid Federal permit for rock shrimp, that were harvested from the South Atlantic EEZ, and that were landed and sold in compliance with state and Federal regulations will be used to establish eligibility.

(iii) For the purpose of eligibility for an initial limited access endorsement

for South Atlantic rock shrimp, the owner of a vessel that had a permit for South Atlantic rock shrimp during the qualifying period retains the rock shrimp landings record of that vessel during the time of his/her ownership, unless, prior to January 16, 2003, a sale of the vessel includes a written agreement that credit for qualifying landings is transferred to the new owner. Qualifying landings are landings of at least 15,000 lb (6,804 kg) of rock shrimp harvested from the South Atlantic EEZ in any one of the calendar years 1996 through 2000. Such transfer of credit must be for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the seller's ownership; no partial transfers are allowed.

(d) *Implementation procedures*—(1) *Notification of status.* On or about March 17, 2003, the RA will notify each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a vessel currently permitted for South Atlantic rock shrimp, of the RA's initial determination of eligibility for a limited access endorsement for South Atlantic rock shrimp. The notification will include a determination regarding the 15,000-lb (6,804-kg) threshold level for the endorsement. If the landings in the combined state and Federal databases do not meet the 15,000-lb (6,804-kg) threshold for any of the qualifying years, the landings in each of the qualifying years, as shown in those databases, will be included. Each notification will include an application for such endorsement. Addresses for notifications will be based on the RA's permit records. Each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a currently permitted vessel, who does not receive notification by April 1, 2003 must advise the RA of non-receipt within 15 days thereafter.

(2) *Applications.* (i) An owner of a vessel who desires a limited access endorsement for South Atlantic rock shrimp must submit an application for such endorsement postmarked or hand-delivered not later than May 16, 2003. Failure to apply in a timely manner will preclude issuance of an endorsement even if the vessel owner meets the eligibility criteria for the endorsement.

(ii) An applicant who agrees with the RA's initial determination of eligibility does not need to provide documentation of eligibility with his/her application.

(iii) An applicant who disagrees with the RA's initial determination of eligibility must provide documentation of eligibility with his/her application.

Such documentation must include the name and official number of the vessel permitted for South Atlantic rock shrimp and the dates, quantities, trip tickets, and purchasing dealers for specific landings claimed for the vessel. In addition, if an owner's application for a limited access endorsement is based on qualifying landings that were transferred to him/her through a written agreement, as discussed in paragraph (c)(2)(iii) of this section, the application must be accompanied by a copy of that agreement and a statement of the cost associated with obtaining the catch history. Documentation and other information submitted on or with an application are subject to verification by comparison with state or Federal records and information. If such documentation and information cannot be verified from state or Federal records and information, the documentation and other information will be rejected. Submission of false documentation or information may disqualify an owner from obtaining an initial limited access endorsement for South Atlantic rock shrimp and is a violation of the regulations in this part.

(iv) If an application that is postmarked or hand delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 20 days of the date of the RA's notification, the application will be considered abandoned.

(3) *Issuance.* If a complete application is submitted in a timely manner and the eligibility requirements specified in paragraph (b) of this section are met, the RA will take action as follows:

(i) If a qualified applicant owns a vessel that has a valid permit for South Atlantic rock shrimp, the RA will issue an initial limited access endorsement for South Atlantic rock shrimp and mail it to the vessel owner prior to July 15, 2003.

(ii) If a qualified applicant does not currently own a vessel, the RA will inform him/her of qualification, but no endorsement will be issued. Such qualified applicant must apply for a permit and endorsement for a vessel that he/she owns, or transfer the rights to the endorsement to an owner of a vessel, prior to July 15, 2005. After that date, the rights to an initial limited access endorsement for South Atlantic rock shrimp that were based on the qualification will expire. A qualified applicant who desires to transfer the rights to an initial endorsement to the owner of a vessel must submit an application requesting such transfer to the RA. Such transfer of rights will

include transfer of credit for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the qualified applicant's ownership.

(4) *Reconsideration.* (i) If the eligibility requirements specified in paragraph (b) of this section are not met, the RA will notify the applicant, in writing, not later than July 16, 2003. The notification will include the reason for the determination that the eligibility requirements were not met. An applicant may request reconsideration of the RA's determination regarding initial endorsement eligibility by submitting a written request for reconsideration to the RA. Such request must be postmarked or hand-delivered not later than September 15, 2003 and must provide additional written documentation supporting eligibility for the endorsement.

(ii) Upon receipt of a request for reconsideration, the RA will forward the initial application, the RA's response to that application, the request for reconsideration, and pertinent records to an Application Oversight Board consisting of state directors (or their designees) from each state in the Council's area of jurisdiction. Upon request, a vessel owner may make a personal appearance before the Application Oversight Board.

(iii) If reconsideration by the Application Oversight Board is requested, such request constitutes the applicant's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Act for the RA to make available to the members of the Application Oversight Board such confidential catch and other records as are pertinent to the matter under reconsideration.

(iv) The Application Oversight Board may only deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly in the applicant's case, based solely on the available record, including documentation submitted by the applicant. The Application Oversight Board may not consider whether an applicant should have been eligible for a vessel permit because of hardship or other factors. The Application Oversight Board members will provide individual recommendations for each application for reconsideration to the RA.

(v) The RA will make a final decision based on the eligibility criteria specified in paragraph (b) of this section and the available record, including documentation submitted by the applicant, and the recommendations and comments from members of the Application Oversight Board. The RA may not consider whether an applicant

should have been eligible for a vessel permit because of hardship or other factors. The RA will notify the applicant of the decision and the reason for it, in writing, within 15 days of receiving the recommendations from the Application Oversight Board members. The RA's decision will constitute the final administrative action by NMFS.

(e) *Transfer of an endorsement.* A limited access endorsement for South Atlantic rock shrimp is valid only for the vessel and owner named on the permit/endorsement. To change either the vessel or the owner, an application for transfer must be submitted to the RA. An owner of a vessel with an endorsement may request that the RA transfer the endorsement to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of an endorsement under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(f) *Renewal.* The RA will not reissue a limited access endorsement for South Atlantic rock shrimp if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(g) *Non-renewal of inactive endorsements.* In addition to the sanctions and denials specified in § 622.4(j)(1), a limited access endorsement for South Atlantic rock shrimp that is inactive for a period of 4 consecutive calendar years will not be renewed. For the purpose of this paragraph, "inactive" means that the vessel with the endorsement has not landed at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

(h) *Reissuance of non-renewed permits.* A permit that is not renewed under paragraph (g) of this section will be made available to a vessel owner randomly selected from a list of owners who had documented landings of rock shrimp from the South Atlantic EEZ prior to 1996 but who did not qualify for an initial limited access endorsement. To be placed on the list, an owner must submit a written request to the RA postmarked or hand-delivered not later than January 16, 2004. The written request must contain documentation of each specific landing claimed, i.e., date, quantity of rock shrimp, name and official number of the harvesting vessel, ownership of the vessel at the time of landing, and name and address of the purchasing dealer. Claimed landings that are not verified by comparison with

state trip ticket or dealer records will not be recognized.

8. In § 622.41, the heading of paragraph (g) is revised and paragraph (j) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Penaeid shrimp in the South Atlantic.* * * *

* * * * *

(j) *Rock shrimp in the South Atlantic off Georgia and Florida.* The minimum mesh size for the cod end of a rock shrimp trawl net in the South Atlantic EEZ off Georgia and Florida is 1 7/8 inches (4.8 cm), stretched mesh. This minimum mesh size is required in at least the last 40 meshes forward of the cod end drawstring (tie-off rings), and smaller-mesh bag liners are not allowed. A vessel that has a trawl net on board that does not meet these requirements may not possess a rock shrimp in or from the South Atlantic EEZ off Georgia and Florida.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-234-FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with one exception, a proposed amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the Kentucky Revised Statutes (KRS) at 350.445 pertaining to the construction of a road above a highwall. Kentucky revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260-8400. Internet address: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Proposed Amendment

By letter dated May 9, 2000 (administrative record no. KY-1473), Kentucky submitted a proposed amendment to its approved permanent regulatory program. Three house bills were included in the submission. House Bill (HB) 502 continues in effect the current administrative regulations on ownership and control. HB 599 creates a new section of KRS Chapter 350 and pertains to an easement of necessity. HB 792 amends KRS 350.445(3) and is the subject of this rule. We previously announced our decisions on HB 502 and 599 in the April 30, 2002 **Federal Register** (67 FR 21173), and the June 20, 2001 **Federal Register** (66 FR 33020), respectively.

We announced receipt of the proposed amendment in the May 31, 2000, **Federal Register** (65 FR 34625), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 30, 2000.