

Pinnacles, 27,690 lobsters; Maro Reef, 89,570 lobsters; and the other remaining lobster banks combined, 71,240 lobsters. The intent of this action is to prevent overfishing and achieve the objectives of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

DATES: Effective July 2, 1999.

ADDRESSES: Copies of background material pertaining to this action may be obtained from Alvin Z. Katekaru, Fishery Management Specialist, Pacific Islands Area Office (PIAO), NMFS, 2570 Dole St., Honolulu, HI 96822 or Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808-973-2937.

SUPPLEMENTARY INFORMATION: During 1998, the Western Pacific Fishery Management Council (Council) and NMFS, under FMP framework procedures, implemented a bank-specific harvest guideline program for the NWHI lobster fishery to prevent the potential risk of fishermen over-exploiting the lobster resources at Necker Island, Gardner Pinnacles, and Maro Reef. That program was for only one season, July 1 through December 31, 1998. At its meeting in December 1998, the Council recommended the establishment of four NWHI lobster fishing grounds consisting of Necker Island, Gardner Pinnacles, Maro Reef, and the other remaining NWHI lobster banks combined. Also, the Council recommended that the Regional Administrator, in consultation with the Council, be authorized to allocate the annual NWHI-wide harvest guideline among the four fishing grounds. On April 8, 1999, the Council requested the Regional Administrator to initiate rulemaking to establish a permanent bank-specific harvest allocation program for the NWHI lobster fishery.

Under a separate rule, appearing in today's **Federal Register**, NMFS established a permanent bank-specific harvest allocation program. On March 11, 1999, NMFS announced in the **Federal Register** (64 FR 12092) the 1999 NWHI-wide harvest guideline of 243,100 lobsters, spiny and slipper lobsters combined, based on an estimated total exploitable lobster population of 1,870,000. Subsequently, NMFS Southwest Fisheries Science Center scientists calculated exploitable population estimates for Necker Island, Gardner Pinnacles, Maro Reef, and the other remaining lobster banks combined. By applying the FMP-specified constant harvest rate of 13

percent to the exploitable population estimates for each of the four fishing grounds, the Regional Administrator determined the 1999 harvest guideline for Necker Island to be 54,600 lobsters; Gardner Pinnacles, 27,690 lobsters; Maro Reef, 89,570 lobsters; and all the other remaining NWHI lobster banks combined, 71,240 lobsters. The Regional Administrator will close each fishing ground when its harvest guideline is estimated to be reached.

The PIAO will monitor landings and issue timely reports of the level of cumulative catch information and of the amount of the harvest guideline remaining for each fishing ground. Fishermen are advised to contact the PIAO (see **ADDRESSES**) periodically to stay abreast of any changes and of the progress of the fishery toward attaining the bank-specific harvest guideline of each of the fishing grounds. When the harvest guidelines of all the fishing grounds are attained, the Regional Administrator will close the entire NWHI lobster fishery. Under the procedures in 50 CFR 660.50(b), NMFS will announce the date upon which the harvest guideline will be reached and when the fishery will be closed.

Classification

This action is authorized by 50 CFR part 660 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, (AA) finds that because this action merely announces bank-specific harvest guidelines resulting from nondiscretionary application of the objective harvest guideline formula in Amendment 9 to the FMP, no useful purpose would be served by providing prior notice and opportunity for public comment. Accordingly, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive as unnecessary the requirement to provide prior notice and opportunity for public comment. The AA also finds that there is good cause to waive the 30-day delay in effectiveness for this rule under 5 U.S.C. 553 (d)(3). In order to insure the health of the lobster resources in the NWHI by preventing the potential for overexploiting those resources at any of the major fishing grounds (Necker Island, Gardner Pinnacles, or Maro Reef) this fishing season, this action must be in effect as soon as practicable after the season opening on July 1, 1999. Therefore, delaying this action would be contrary to the public interest and unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

Dated: July 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99-17324 Filed 7-2-99; 4:15 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990630177-9177-01; I.D. 051099A]

RIN 0648-AK61

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; Bank-specific Harvest Guidelines

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment under the framework procedures of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region. This rule divides the Northwestern Hawaiian Islands (NWHI) lobster fishery into four fishing grounds and allows the Southwest Regional Administrator, NMFS (Regional Administrator) to allocate the annual NWHI harvest guideline among these grounds for the 1999 season and beyond. Also, this final rule allows a lobster vessel carrying an operational NMFS-certified vessel monitoring system (VMS) unit to be within the boundary of a fishing grounds immediately after it is closed, provided the vessels is making steady progress to an open fishing grounds or back to port. This rule is intended to protect the lobster resources at each fishing ground, to provide better data on stocks, and to conserve the resource.

DATES: Effective July 2, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) for this action are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. Send comments

regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to Pacific Islands Area Office, NMFS, 2570 Dole Street, Honolulu, HI, 96822-2396 and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds at 808-522-8220 or Alvin Z. Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS, at 808-973-2985.

SUPPLEMENTARY INFORMATION: This rule divides the NWHI lobster fishery into four fishing grounds: Necker Island, Gardner Pinnacles, Maro Reef, and all the remaining lobster banks combined, for the purpose of allocating the annual NWHI lobster harvest guideline among them. Also, the rule authorizes the Regional Administrator, in consultation with the Western Pacific Fishery Management Council (Council), to allocate the annual NWHI-wide lobster harvest among the four lobster fishing grounds. Under this final rule, the harvest of lobster and the possession of lobster traps on board a permitted lobster vessel will be prohibited within a lobster fishing ground when the harvest guideline allocation is determined to have been taken, unless the vessel has on board an operational NMFS-certified VMS unit and is making steady progress to another fishing ground that is open, or is returning to port. Also, vessels with a VMS unit will not be subject to a specified time by which their lobsters must be landed. Vessels not carrying an operational VMS unit will be required to land their lobsters within a specified time period, to be announced by the Regional Administrator, following closure of the fishery, as provided by current regulations (50 CFR 660.50).

The preamble of the proposed rule contained descriptions of the alternatives considered, as well as the reasons for adopting the preferred alternative; those reasons are not repeated here. (64 FR 29834, June 3, 1999). This final rule is intended to help prevent localized depletion of the lobster populations at Necker Island, Gardner Pinnacles, and Maro Reef; to promote broader distribution of fishing effort among the remaining NWHI fishing grounds; to obtain better data on the lobster stocks, which would allow for the specification of additional fishing grounds as new information becomes available; and to conserve the resource. The intent of the VMS

provision is to encourage lobster vessels to carry a VMS unit to allow NMFS to monitor their location on a real-time basis.

No comments were received on the proposed rule. Therefore, the final rule is unchanged from the proposed rule, with the exception of one technical change. The proposed rule incorrectly referenced a proposed change to § 660.48(a)(7) when the change actually intended was to § 660.48(a)(8). The final rule makes the necessary correction.

In a separate rule, appearing in today's *Federal Register*, NMFS announces the allocation of the 1999 harvest guideline of 243,100 lobsters among each of the four fishing grounds.

Classification

The Assistant Administrator for Fisheries, NOAA, for good cause, waives the 30-day delay in effectiveness for this rule under 5 U.S.C. 553(d)(3) in order to ensure the health of the lobster resource in the NWHI by preventing the potential for severe depletion of the lobster population at any of the major fishing grounds: Necker Island, Gardner Pinnacles, and Maro Reef, this fishing season. The rule should be in effect by July 1, when the fishing season starts, or as soon as possible thereafter. The allocation of the harvest guideline itself does not require action by any fisherman; rather it directs when the Regional Administrator must close each of the four fishing grounds. All participants will be provided actual notification of this rule. Therefore, delaying implementation of this rule would be contrary to the public interest and unnecessary.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an EA/RIR/IRFA and a FRFA as part of the regulatory impact review. No public comments were received on the initial regulatory flexibility analysis (summarized in the *Federal Register* on June 3, 1999, at 64 FR 29834). A summary of the FRFA follows. The final rule establishes four fishing grounds: Necker Island, Gardner Pinnacles, Maro Reef, and all the remaining lobster fishing banks combined, for the purpose of allocating the annual NWHI lobster harvest guideline among them. It is intended to protect the lobster resources at each fishing ground, to provide better data on stocks, and to conserve the resource. The preambles to the proposed and final rules provide more details on the need for, and objectives of, this rule. The final rule applies to the 12 individuals who have been issued the 15 permits in the NWHI limited entry crustacean fishery.

All participants in this fishery are small entities. No new reporting or recordkeeping requirements are required by the rule. This action embodies several steps taken to minimize the economic impact of the chosen measure on small entities. First, the alternative implemented by this final rule will result in long-term economic benefits to the fishery. Second, any vessel with an operational NMFS-certified VMS unit on board is not required to land lobsters by a specified time (thereby allowing flexibility in the vessel's activities). Also, any vessel so equipped may transit across a closed lobster fishing ground when it is making steady progress to another fishing ground that is open or it is returning to port. The reason for choosing the alternative implemented by this rule is that it will best allow for the attainment of the objectives of protecting lobster at each fishing ground, of providing better data, and of conserving the resource. The Council considered operating the fishery under a single annual harvest guideline, but rejected this alternative because it would not provide a means of limiting localized depletion. The Council considered Necker-Marogardner (only) bank-specific harvest guidelines but rejected this alternative primarily because it would not afford bank-specific protection to other NWHI banks, if needed. The Council considered general area-specific harvest guidelines and full bank-specific harvest guidelines but rejected these alternatives because a lack of data for making these types of allocations may lead to mis-specified harvest guidelines.

Based on the experience of the 1998 fishery which was managed under an nearly identical rule, participants are expected to fish at the Necker Island, Maro Reef, and Gardner Pinnacles fishing grounds until each closes. Some fishing is expected to take place on the other remaining lobster grounds in the NWHI (Table 1 of the RIR/IRFA and FRFA). However, average catch per unit of effort rates are expected to be lower than those at Necker Island, Gardner Pinnacles, and Maro Reef, and the entire NWHI harvest may not be taken (22 percent of the total harvest guideline was not taken in 1998). This will lead to lower average gross revenues, as well as to slightly higher travel costs, compared to the same harvest guidelines unallocated among banks (Table 2 of the RIR/IRFA and FRFA). However, this rule should result in long-term economic benefits to the fishery as the resource increases with improved fisheries management. A copy of the

FRFA is available from the Council (see ADDRESSES).

This rule contains a collection-of-information requirement regarding VMS use and is subject to the Paperwork Reduction Act. (PRA). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any 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. The collection of this information has been approved by OMB, under OMB control number 0648-0307. This rule's collection-of-information burden is only for those persons who wish to voluntarily use a VMS unit in the fishery. The collection is to query through the VMS system a vessel to learn of its location before and after the start of the season or closure of a fishing ground, which is automatic with no action required by the vessel operator, except to verify the VMS unit is operating. The burden associated with this collection is estimated to require a response time of .033 seconds. Permit holders whose vessels are not equipped with VMS would have the option of installing new VMS in order to participate under this regulatory option for the opening and closing of the lobster season and transiting between fishing grounds. Send comments regarding the collection-of-information burden or any other aspect of the information collection to NMFS and OMB (see ADDRESSES).

An informal consultation under the Endangered Species Act was concluded on June 7, 1999, to determine whether the effect on Hawaiian monk seals from the fishery managed under this action is likely to be adverse. As a result, the Regional Administrator determined that fishing activities conducted under this rule are not likely to affect adversely endangered or threatened species or critical habitat.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

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

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

2. Section 660.12 is amended by adding the definition of "Lobster grounds", in alphabetical order, to read as follows:

§ 660.12 Definitions.

* * * * *

Lobster grounds refers, singularly or collectively, to the following four areas in Crustaceans Permit Area 1 that shall be used to manage the lobster fishery:

(1) Necker Island Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00' N. lat., 165°00' W. long.; 24°00' N. lat., 164° 00' W. long.; 23°00' N. lat., 164°00' W. long.; and 23°00' N. lat., 165°00' W. long.

(2) Gardner Pinnacles Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20' N. lat., 168°20' W. long.; 25°20' N. lat., 167° 40' W. long.; 24°20' N. lat., 167°40' W. long.; and 24°20' N. lat., 168°20' W. long.

(3) Maro Reef Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40' N. lat., 171°00' W. long.; 25°40' N. lat., 170° 20' W. long.; 25°00' N. lat., 170°20' W. long.; and 25°00' N. lat., 171°00' W. long.

(4) General NWHI Lobster Grounds— all waters within Crustaceans Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

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3. Section 660.42 is amended by adding new paragraphs (a)(1)(vi) and (a)(13) to read as follows:

§ 660.42 Prohibitions.

* * * * *

(a) * * *

(1) * * *

(vi) In a lobster grounds after closure of that grounds as specified in § 660.50(b).

* * * * *

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 660.50(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

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4. Section 660.48 is amended by revising paragraph (a)(8) to read as follows:

§ 660.48 Gear restrictions.

(a) * * *

(8) A vessel whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS may transit Crustaceans Permit Area 1, including Crustaceans Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 660.50, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

* * * * *

5. Section 660.50 is amended by revising paragraph (a) introductory text, paragraphs (b)(1), (b)(3) and (b)(4), and adding new paragraph (b)(5) to read as follows:

§ 660.50 Harvest limitation program.

(a) General. Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

* * * * *

(b) Harvest guideline. (1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FMP after consultation with the Council.

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(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 660.48(a)(8).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the over-all harvest guideline for Crustaceans Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustaceans Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by

permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

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[FR Doc. 99-17323 Filed 7-2-99; 4:15 pm]

BILLING CODE 3510-22-F