

Channel 250A at Whitesboro are North Latitude 43-07-19 and West Longitude 75-17-31. Canadian concurrence has been received since Whitesboro is located within 320 kilometers (200 miles) of the U.S.-Canadian border. The mutually exclusive proposal of Carmine M. Iannace to allot Channel 250A at Stamford, New York, is denied (RM-7547). With this action, this proceeding is terminated.

**DATES:** April 13, 1992. The window period for filing applications will open on April 14, 1992, and close on May 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-610, adopted February 18, 1992, and released February 27, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Whitesboro, Channel 250A.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-4929 Filed 3-3-92; 8:45 am]

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**47 CFR Part 73**

[MM Docket No. 90-545; RM-7504]

Radio Broadcasting Services, Copperas Cove, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule

**SUMMARY:** The Commission, at the

request of Centroplex Communications, Inc., licensee of Station KOOV-FM, Channel 276A, Copperas Cove, Texas, substitutes Channel 276C3 for Channel 276A at Copperas Cove, and modifies KOOV-FM's license to specify operation on the higher powered channel. See 55 FR 48258, November 11, 1990. Channel 276C3 can be allotted to Copperas Cove in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.8 kilometers (9.2 miles) southwest to avoid a short-spacing to a construction permit (BPH-9104041C) for Station KWOW-FM, Channel 277C3, Clifton, Texas. The coordinates for Channel 276C3 are 31-03-19 and 98-02-00. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** April 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-545, adopted February 12, 1992, and released February 27, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting.

**PART 73—AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 276A and adding Channel 276C3 at Copperas Cove.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-4932 Filed 3-3-92; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

50 CFR Part 685

[Docket No. 911175-2029]

RIN 0648-AE24

**Pelagic Fisheries of the Western Pacific Region**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 5 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The rule prohibits longline fishing within 75 nautical miles (nm) of the islands of Oahu, Kauai, Niihau, and Kaula, and within 50 nm of the islands of Hawaii, Maui, Kahoolawe, Lanai, and Molokai. A longline closure of approximately 50 nm also is implemented around Guam and its offshore banks. Framework procedures authorize rulemaking to adjust the size of the areas and to modify the criteria for exemptions to vessel owners suffering economic hardship. This action is necessary to prevent gear conflicts between longline vessels and troll/handline vessels engaged in the pelagic fisheries.

**DATES:** This action becomes effective at 0000 hours local time March 2, 1992.

**ADDRESSES:** Copies of Amendment 5 and the environmental assessment may be obtained from the Western Pacific Fishery Management Council, 1184 Bishop Street, suite 1405, Honolulu, HI 96813.

Send comments on the collection of information to the Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213, and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), ATTN: Paperwork Reduction Project 0648-0214, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213, (310) 980-4034; or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955-8831.

**SUPPLEMENTARY INFORMATION:** As summarized in the proposed rule (56 FR 60961, November 29, 1991), interactions between the approximately 150 longline vessels and the 2,400 vessels of the troll/handline fleet based in Hawaii have led

to physical confrontations and destruction of gear. A voluntary informal agreement coordinated by the State of Hawaii whereby longline fishermen agreed to stay at least 20 nm from shore failed; therefore, an emergency rule (56 FR 28116, June 19, 1991) implemented the 75/50-nm area closures. The emergency rule was subsequently extended for a second 90-day period (56 FR 47701, September 20, 1991). Amendment 5 implements the area closures permanently with procedures to modify the closures as more information becomes available.

#### Comments Received and Responses

No comments were received on the closure of the longline fishery around the Territory of Guam.

Thirty-three comments were received opposing the closures around Hawaii, plus petitions bearing 86 signatures protesting the closures. Those supporting the closures have submitted 20 comments, plus petitions bearing 454 signatures and hundreds of form letters addressed to the Secretary of Commerce. The following discussion of issues raised, especially those related to interactions between fleets, is based on limited data, because the Federal program requiring longline vessels to submit logbook information has only been in effect since mid November 1990, and reporting of commercial landings under State of Hawaii regulations has been incomplete. The troll/handline vessels are largely limited to near-shore areas. About 99 percent of the trips are made within 20 nm of shore.

A summary of the comments received on the proposed regulations and responses to them follow.

*Comment 1:* Since the 75/50-nm closures have been in effect, there has been a substantial decline in the amount of pelagic species brought to auction by longliners.

*Response:* The harvest of pelagic species is highly variable from year to year, and attributing a decline in catches to the area closures is premature. Preliminary figures do show a decline in yellowfin tuna caught by longline in 1991 following increasing harvests since 1987; however, troll- and handline-caught yellowfin tuna dropped precipitously from 1988 to 1990 without any change in the management regime. There is a possibility that the catch of some species may decline for some segments of the industry, such as for loneline vessels of certain size categories, but total longline catches are up in 1991, mainly due to catches of swordfish by vessels fishing beyond the closures. In the absence of clear evidence of harm, the Council decided

that maintaining closures to prevent conflicts was the best approach, and took into consideration the possibility of detrimental effects of some segments of the industry by establishing a framework system to modify the area closures based on additional information, and by appointing a special advisory panel to work out a compromise approach on area closures that will still prevent gear conflicts.

*Comment 2:* Amendment 5 frustrates the achievement of optimum yield in the western Pacific pelagics fishery because the area closures will result in the reduction of landings.

*Response:* The area closures will not necessarily lead to a reduction of harvest, although some adjustment to the new conditions may be required to maintain landings of certain species. The migratory nature of the species involved suggests that these adjustments can be made, and the Council's commitment to adjust the areas based on collected data ensures the consideration of any detrimental effects on harvest. Also, optimum yield is not permitted on the maximum harvest of every species in the pelagic fisheries; relevant social factors such as gear conflicts are to be considered during implementation of the FMP.

*Comment 3:* Amendment 5 is not based on the best scientific information available, because the data do not show that there have been gear conflict problems throughout the proposed 75/50-nm closed areas. The Scientific and Statistical Committee reported in February 1991 that 95 percent of troll/handline fishery occurs inside 55 nm.

*Response:* The Council has faced increasing controversy on gear conflicts since 1987. Conflicts between longliners, many of which had arrived from the Gulf of Mexico, and troll/handline fishermen became serious. Some of the interactions led to physical confrontations and destruction of gear. A "gentlemen's agreement" between the opposing groups coordinated by the State of Hawaii established a 20-nm closed area but the agreement failed when longliners did not comply with the closure. Tensions continued to mount and the Council was concerned that continued gear conflicts might lead to violent confrontations. Virtually every comment received, from longline operators as well as those from the troll/handline fleet, accept some kind of area closures, and suggestions have been made for smaller and larger closures than the Council adopted. After examining available data, recommendations of the Pelagic Task Force appointed by the Council, and public input, the Council concluded that

a 75-nm closure around Kauai County and Honolulu County and a 50-nm closure around Maui County and Hawaii County are warranted. Examination of State of Hawaii catch reports shows that, while the majority of commercial trolling trips are taken within 20 nm of shore, an increasing number of trips are reported at distances of 50 to 60 nm off Kauai, Oahu and the west coast of Hawaii, and 40 nm off Maui, Molokai and Lanai. Although some adverse consequences on longline vessels and on markets might result, the Council decided to adopt closures that prevent the possibility of conflicts rather than accept smaller closures that would run the risk of continuing conflicts.

*Comment 4:* Longline vessels threaten the troll/handline fleet by affecting its harvest.

*Response:* Only general conclusions can be drawn from the data at this time. When yellowfin tuna were more abundant, they also were more abundant for longliners and for the small boat fishermen. This pattern of species abundance also holds for blue marlin, striped marlin, and bigeye tuna. If longline harvest are affecting the troll/handline fleet, this probably has been caused by longline harvest in all areas and is not related to the specific areas under consideration for preventing gear conflicts. The only goal of the rule is to prevent gear conflicts and to set up a system by which adverse impacts can be reduced.

*Comment 5:* Amendment 5 improperly allocates fishing privileges, because it assigns specific areas to groups of fishermen to further purposes not rationally connected with a legitimate objective of the FMP. Smaller closures would achieve the same goal.

*Response:* Reduction of gear conflicts is an objective of the FMP. The potential for violence between longline vessels and the troll/handline vessels has moved the Council to prevent conflicts. Smaller closures would not achieve that goal. Many comments from the troll/handline vessels say that longline vessels are severely affecting the resource and are threatening their livelihood. The closures are not intended to allocate fishing privileges, as is made clear by the simplified rulemaking procedure by which the Regional Director and/or the Council may modify the closed areas, if needed, by the authority to grant exemptions in the case of longline vessels that have traditionally fished off Hawaii, and by the Council's appointment of a special advisory panel to seek an agreement on area closures that prevent vessel

conflicts while reducing detrimental effects on the industry.

**Comment 6:** Amendment 5 does not promote efficiency in the utilization of fishery resources, because the excessive closures increase expenses, reduce fish quality, and force longliners out of the fishery.

**Response:** At this time there is no clear evidence of increased expenses, reduced catch, or reduced fish quality. From logbook data since mid November 1990, longliners caught 18.4 percent of the fleet's tuna and 11.8 percent of other pelagics within the 50/75-nm closure area. The fleet caught 81.6 percent of its tuna and 88.2 percent of other pelagics beyond the 50/75-nm closure area.

From January 1990 through June 1991, 29.1 percent of the reported longline trips occurred within 20 nm of the main Hawaiian Islands, 16.8 percent between 20 nm and the outer boundary of the 50/75-nm closure area, and 54.1 percent beyond the 50/75-nm closure area. However, only 17.3 percent of the total number of longline sets were within the 50/75-nm closure area. Similarly, only 18.6 percent of the total number of hooks fished were within the 50/75-nm closure area. The percent of total longline fishing effort made in the 50/75-nm zone, measured in the number of sets made and number of hooks deployed, is substantially lower than the percent of fishing effort measured in terms of trips. Large longliners with a higher fishing power, many of which target swordfish, fish much farther from the main Hawaiian islands than vessels with smaller fishing power, which target mostly tuna.

From the above limited information, it appears that larger longline vessels may be able to make up lost catch outside the closed areas; however, smaller longline vessels may suffer adverse economic effects by the closures. Because many uncertainties remain concerning the effect of the closures, the Council has developed two framework procedures that are contained in this rule. One requires an annual review of the closures and permits changing the size of the areas based on data obtained subsequent to implementation of the closures. The second authorizes the Council and the Regional Director to initiate rulemaking to allow exemptions from the closed areas to longliner operators who can demonstrate financial hardship as a result of the closures around Hawaii.

**Comment 7:** The proposed exemptions to the longline closures are arbitrary and unreasonably restrictive.

**Response:** Exemptions were considered by the Council when the possibility arose that owners of vessels

that had been active in the fishery for many years may not be able to comply with the area closures and still remain in the fishery. The Council was willing to consider exemptions as long as the goal of preventing conflicts could be achieved. The initial criteria were designed to be restrictive, because exemptions were to apply only in cases of extreme financial hardship and were not intended to apply to all vessels that had to adjust to the new fishing areas. The Council's Pelagic Advisory Review Board is to assess whether exemptions under Amendment 5 should continue and, if so, review the qualifying criteria on which to base additional exemptions. Three exemptions were granted under the authority of the emergency rule.

#### Changes From the Proposed Rule

Only technical changes were made in the final rule. These changes are contained in 50 CFR 685.24 (a)(2) and (a)(3), and in 50 CFR 685.25 (b) and (f).

#### Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that Amendment 5 to the FMP and its implementing regulations are necessary for the conservation and management of the pelagic fishery resources of the western Pacific region and are consistent with the Magnuson Act and other applicable law. Consequently, on January 22, 1992, the Assistant Administrator approved the Amendment.

The Council prepared an environmental assessment (EA) for the emergency interim rule that established area closures around the main Hawaiian Islands. The Assistant Administrator concluded that there would be no significant effect on the human environment. In preparation for Amendment 5, a supplemental EA was prepared analyzing the longline closures around Guam. The Assistant Administrator concluded that there would be no significant effect on the human environment because of this rule.

The Assistant Administrator for Fisheries has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small businesses.

Section 685.25 of this rule contains a collection-of-information requirement that is subject to the Paperwork Reduction Act. This information

collection has been approved by the Office of Management and Budget (OMB), under OMB control number 0648-0214. The estimated information collection burden is 4 hours per exemption application to review instructions, compile the necessary information, and submit it to NMFS. Comments on the collection of information and/or suggestions on how to reduce the burden can be sent to the Director, Southwest Region, NMFS, and to the OIRA OMB (see ADDRESSES).

The Council has determined that the action is consistent to the maximum extent practicable with the approved coastal management programs of the State of Hawaii and the Territory of Guam. The State of Hawaii and the Territory of Guam have agreed with the determination.

An informal consultation was conducted under section 7 of the Endangered Species Act (ESA) and it was determined that this action is not likely to adversely affect any endangered or threatened species listed under the ESA, nor will it adversely affect any critical habitat of any listed species.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

To afford maximum opportunity for public comment and participation, the Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier date. This rule, implementing Amendment 5 to the FMP, makes permanent with few changes certain management measures that were promulgated, with a request for comments, by emergency rule (56 FR 28116, June 19, 1991) and subsequently extended for a second 90-day period (56 FR 47701, Sept. 20, 1991). The emergency rule was modified on November 26, 1991 (56 FR 59896) to allow persons with a long history of participation in and dependence on the longline fishery in nearshore waters to continue operations in those waters that were otherwise closed to longline fishing. The public has had opportunities to comment on that emergency rule as well as to participate in the development of Amendment 5 and to comment on the proposed rule to implement Amendment 5. The emergency rule was effective until December 16, 1991. The Assistant Administrator has determined that the

potential for gear conflicts in the absence of this rule constitutes good cause to waive the 30-day delayed-effectiveness period and make this rule effective at 0000 hours local time 3 days from date of filing with the Office of the Federal Register. The rule is not made effective immediately so that longline vessels currently in the closed areas are able to retrieve their gear and relocate.

#### List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 27, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

#### PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.2, the new definitions for "Guam longline fishing prohibited area", "Hawaii longline fishing prohibited area" and "Main Hawaiian Islands" are added, in alphabetical order, to read as follows:

#### § 685.2 Definitions.

*Guam longline fishing prohibited area* means the waters around Guam bounded by straight lines connecting the following coordinates in the order listed:

- (1) 14° 25' 00" N, 144° 00' 00" E
- (2) 14° 00' 00" N, 143° 38' 00" E
- (3) 13° 41' 00" N, 143° 33' 30" E
- (4) 13° 00' 00" N, 143° 25' 30" E
- (5) 12° 20' 00" N, 143° 37' 00" E
- (6) 11° 40' 00" N, 144° 09' 00" E
- (7) 12° 00' 00" N, 145° 00' 00" E
- (8) 13° 00' 00" N, 145° 42' 00" E
- (9) 13° 27' 00" N, 145° 51' 00" E

*Hawaii longline fishing prohibited area* means the waters within 75 nm of the Islands of Oahu, Kauai, Niihau, and Kaula, and the waters within 50 nm of the islands of Hawaii, Maui, Kahoolawe, Lanai, and Molokai, as measured from the baseline from which the seaward boundary of the State of Hawaii is defined.

*Main Hawaiian Islands* means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161° West longitude.

3. In § 685.5, a new paragraph (t) is added to read as follows:

#### § 685.5 Prohibitions.

(t) Fish with longline gear within the Guam longline fishing prohibited area or the Hawaii longline fishing prohibited area, except pursuant to an exemption provided under § 685.25.

4. In subpart B, a new § 685.24 is added, to read as follows:

#### § 685.24 Changes to longline fishing prohibited areas; procedures.

(a) *Annual adjustment.* (1) Each year the Council shall review the annual pelagics fisheries report prepared by the plan monitoring team, and consider recommendations of the Pelagic Review Board, Advisory Panel, Scientific and Statistical Committee, and public comments, to assess the need for changing the size of the Hawaii or Guam longline fishing prohibited areas.

(2) If changes are needed, the Council shall advise the Regional Director in writing of its recommendation, and provide the supporting rationale, and an analysis of the impacts of proposed changes.

(3) Following a review of the Council's recommendation, the rationale for the changes and the analysis, the Regional Director may:

(i) Reject the Council's recommendation, in which case written reasons for the rejection will be provided by the Regional Director to the Council; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FMP, the national standards, and other applicable law, initiate rulemaking to implement the recommended changes.

(b) *In-season adjustment.* (1) The Council or Regional Director may consider at any time a change in size of the Hawaii or Guam longline fishing prohibited areas if information becomes available that indicates a change is warranted.

(2) If the Council determines that a change is needed, it shall hold a public meeting at a time and place of the Council's choosing to discuss the new information. The Council may convene the Pelagic Advisory Review Board and Advisory Panel to provide advice prior to taking action. If changes are needed, the Council will advise the Regional Director in writing of its recommendation, including whether to implement the changes by an amendment to the plan or by rulemaking, and provide the rationale for the changes and an analysis of the impacts of those changes.

(3) If the Council decides against amending the plan and recommends that

the Regional Director take action to implement its recommendations, the Regional Director will determine if a change is needed and, after concurrence by the Council, will initiate rulemaking to implement the changes.

5. In subpart B, a new § 685.25 is added, to read as follows:

#### § 685.25 Exemptions for longline fishing prohibited areas; procedures.

(a) An exemption permitting a person to use longline gear to fish in a portion(s) of the Hawaii longline fishing prohibited area will be issued to a person who can document that he or she:

(1) Currently holds a limited entry permit under § 685.15;

(2) Before 1970, was the owner or operator of a vessel when that vessel landed management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area;

(3) Was the owner or operator of a vessel that landed management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area, in at least 5 calendar years after 1969, which need not be consecutive; and

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught management unit species in an area that is now in the Hawaii longline fishing prohibited area.

(b) Each exemption shall specify the portion(s) of the Hawaii longline fishing prohibited area, bounded by longitudinal and latitudinal lines drawn to include each statistical area, as appearing on Hawaii State Commercial Fisheries Charts, in which the exemption holder made the harvest documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the Hawaii longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption under this section must submit an application and supporting documentation to the Pacific Area Office at least 15 days before the desired effective date of the exemption.

(e) If the Regional Director determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional Director may prohibit all longline fishing in the

Hawaii longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

(f) The Council will consider information provided by persons with limited entry permits issued under § 685.15, who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section

should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a) of this section to permit additional exemptions.

(1) If additional exemptions are needed, the Council will advise the Regional Director in writing of its recommendation, including criteria by which financial hardships will be mitigated, while retaining the effectiveness of the longline fishing prohibited area.

(2) Following a review of the Council's recommendation and supporting rationale, the Regional Director may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Director to the Council for the rejection; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FMP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

[FR Doc. 92-5040 Filed 2-28-92; 2:26 pm]

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