

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970623152-7152-01; I.D. 061897A]

RIN 0648-AJ57

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; Vessel Monitoring System

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 vessel monitoring system (VMS) program in the crustaceans fishery of the Northwestern Hawaiian Islands (NWHI). Under this program, a vessel equipped with an operational VMS unit may enter Crustaceans Permit Area 1 (CPA 1) except for the subarea consisting of the area seaward 50 nautical miles (nm) from the geographical center of the islands and banks within CPA 1 with lobster traps on board during the closed season. This rule is necessary to remove a restriction on fishermen so that they may reduce the transit distance and time needed to begin fishing at distant fishing grounds. The intended effect of this action is to reduce fishing on lobster on grounds closest to the main Hawaiian Islands by encouraging the distribution of fishing effort throughout the management area.

DATES: Effective June 26, 1997, except for § 660.48(a)(8), which is effective January 1, 1998.

ADDRESSES: Copies of background material pertaining to this action may be obtained from Ms. Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1405, Honolulu, HI 96813, or Dr. William T. Hogarth, Acting Administrator, Southwest Region, NMFS (Acting Regional Administrator), 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Comments regarding the collection-of-information requirements contained in this rule should be sent to the Acting Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Z. Katekaru at (808) 973-2985;

Mr. Svein Fougner at (562) 980-4034; or Ms. Kitty M. Simonds at (808) 522-8220.

SUPPLEMENTARY INFORMATION: NMFS supports the policy of the Council to establish fishing VMSs where appropriate. A VMS is an automated, real-time, satellite-based tracking system coupled with a Global Positioning System that obtains accurate position reports of vessels at sea. The Council's VMS policy is reflected in Amendment 9 (61 FR 35145, July 5, 1996) to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP) in which the Council recommended consideration of a VMS program for the NWHI.

The NWHI lobster fishery is a limited access fishery with a maximum of fifteen permitted vessels. The program includes a fleet-wide harvest guideline, seasonal closure, closed areas, and gear restrictions. During the July 1-26, 1996, lobster season, a total of 187,583 lobsters, spiny and slipper combined, were harvested by five vessels. Because of the relatively short season, fishing effort was concentrated at Necker Island, the area closest to the main Hawaiian Islands.

On November 21, 1996, at the Council's 91st meeting in Honolulu, Hawaii, NMFS presented a report on the use of a VMS in the fishery based on the results of VMS trials conducted during the 1995 season by one lobster vessel, and during the 1996 season by four of the five lobster vessels in the fishery. The report described three major uses of a VMS: (1) Determination and tracking of vessel position, allowing NMFS enforcement and the U.S. Coast Guard (USCG) to enforce seasonal and area closures cost-effectively; (2) At-sea lobster catch-and-effort reporting facilitated by an on-board computer that transmits data to NMFS via the VMS on a real-time basis; and (3) Ship-to-shore/shore-to-ship communication by which NMFS is able to quickly notify lobster vessels when the fishery will be closed, thus giving fishermen sufficient time to prepare for their departure from the fishing grounds and reduce the likelihood of being in violation of Federal regulations.

At its 91st meeting, the Council approved implementation of a VMS program in the lobster fishery under the framework process of Amendment 9. At its 92nd meeting on April 25, 1997, the Council approved management measures that would implement an optional VMS program and requested NMFS to initiate rulemaking to implement the program before July 1, 1997, when the 1997 fishing season

opens. There was ample opportunity for public comment at the Council meetings, and the only comments received were positive and in favor of the action.

Lobster vessels equipped with an operational VMS unit may enter CPA 1 in order to position themselves closer to the fishing grounds prior to the opening (i.e., closer than the border of CPA 1, which lies approximately 200 nm from the fishing grounds) and will have a shorter distance to exit the grounds when the fishery closes. Such vessels may not enter the subarea consisting of the area that extends seaward 50 nm from the geographical center of each island within CPA 1 prior to the season opening. Lobster vessels without an operational VMS unit must remain outside the CPA 1 boundary prior to the season opening. Lobster vessels with an operational VMS unit must exit the subarea by the close of the season. Lobster vessels without an operational VMS unit must exit CPA 1 by the closure of the fishery and be back in port by a specified date following the closure date, because tracking vessels without a VMS is difficult and prohibitively expensive over such a large area. By not having to be further than outside the boundary of the subarea before and after the season, vessels with an operational VMS unit would also have a lesser distance to transit to and from port.

Although a VMS eases certain requirements in the fishery, it strengthens the enforcement capabilities of NMFS and USCG as demonstrated in a recent VMS pilot program of the Hawaii-based longline fishery. Because the date by which vessel operators would be required to notify the Regional Administrator that a vessel intends to use a VMS unit this fishing season (June 15) has passed, the provisions of § 660.48(a)(8) are waived for this fishing season, allowing vessels with an installed VMS unit to use it this season.

Allowing vessels with a VMS unit to be closer to the fishing grounds will also provide an incentive to fish the more distant grounds further up the NWHI chain, such as Maro Reef, and reduce fishing pressure at Necker Island without fear of violating the requirement to be in port within the required time following closing of the fishing season.

Classification

The Acting Regional Administrator determined that the regulatory amendment is necessary for the conservation and management of the crustacean fishery and that it is consistent with the Magnuson-Stevens

Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator, for good cause, finds under 5 U.S.C. 553(b) that prior notice and opportunity for public comment for this rule is unnecessary. There has been substantial opportunity for public comment on this rule and opportunity for additional public comment would serve no useful purpose. This action has received review during numerous public meetings under a review process at 50 CFR 660.53(d). It has been discussed at Council meetings as well as Advisory Panel meetings. Representatives of the nine vessels planning to fish this season supported adoption of this rule.

Under 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delay in effectiveness for this rule: In order for the fishery to benefit from this rule this fishing season, the rule must be in effect prior to the July 1 start of the fishing season. To this extent, to delay the effectiveness of this rule would be contrary to the public interest. Further, since all nine vessels planning to participate in the fishery this season have already installed VMS units, to delay the effectiveness of this rule for 30 days to allow vessels to come into compliance is unnecessary.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB. 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. This rule's collection-of-information burden is only for those persons who wish to voluntarily use a VMS unit in the fishery. The burden will be used as follows. To query a vessel to learn of its location before and after the start of the season, which is automatic with no action required by the vessel operator, except to verify the VMS is operating, is estimated to require a response time of .033 seconds. All of the nine expected participants in this voluntary system have a VMS installed, therefore, vessel installation and maintenance time is included in the collection requirements for the pelagic fisheries of the Western Pacific. If the additional 6 vessels permitted in this fishery choose to participate, there would be a one-time installation taking 4 hours per vessel, and an annual maintenance of 2 hours per vessel. This collection-of-information was approved by OMB

under OMB Control Number 0648-0307. Send comments regarding the collection-of-information burden or any other aspect of the information collection to NMFS and OMB (see ADDRESSES).

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

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

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: June 25, 1997.

David L. Evans,

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 AND WESTERN PACIFIC STATES

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

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

2. In § 660.12, the definition of "Crustaceans Permit Area 1 VMS Subarea" is added in alphabetical order, and "Vessel monitoring system unit (VMS unit)" is revised to read as follows:

§ 660.12 Definitions.

* * * * *

Crustaceans Permit Area 1 VMS Subarea means an area within the EEZ off the NWHI designated under § 660.48, measured from the center geographical positions of the islands and reefs in the NWHI as follows: Nihoa Island 23°05' N. lat., 161°55' W. long.; Necker Island 23°35' N. lat., 164°40' W. long.; French Frigate Shoals 23°45' N. lat., 166°15' W. long.; Gardner Pinnacles 25°00' N. lat., 168°00' W. long.; Maro Reef 25°25' N. lat., 170°35' W. long.; Laysan Island 25°45' N. lat., 171°45' W. long.; Lisianski Island 26°00' N. lat., 173°55' W. long.; Pearl and Hermes Reef 27°50' N. lat., 175°50' W. long.; Midway Islands 28°14' N. lat., 177°22' W. long.; and Kure Island 28°25' N. lat., 178°20' W. long. Where the areas between islands and reefs are not contiguous, parallel lines drawn tangent to and

connecting those semi-circles of the 50-nm areas that lie between Nohow Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the subarea within Crustaceans Permit Area 1.

* * * * *

Vessel monitoring system unit (VMS unit) means the hardware and software owned by NMFS, installed on vessels by NMFS, and required by subpart C of this part to track and transmit the positions of longline vessels or the hardware and software used by vessels to track and transmit the positions of vessels permitted under subpart D of this part to fish in Crustaceans Permit Area 1.

3. In § 660.42, paragraph (a)(4) is removed, paragraphs (a)(5) through (a)(8) are redesignated as paragraphs (a)(4) through (a)(7) respectively, and new paragraphs (a)(8), (a)(9), (a)(10), (a)(11), (a)(12) and (b)(5) are added to read as follows:

§ 660.42 Prohibitions.

* * * * *

(a) * * *

(1) * * *

(8) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustaceans Permit Area 1 when fishing for lobster is prohibited as specified in §§ 660.45(a), 660.50, 660.51, or 660.52, except as allowed under § 660.48(a)(7).

(9) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in the Crustaceans Permit Area 1 VMS Subarea when fishing for lobsters is prohibited as specified in §§ 660.45(a), 660.50, 660.51, or 660.52.

(10) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same while engaged in the Permit Area 1 fishery; or to move or remove a VMS unit while engaged in the Permit Area 1 fishery without first notifying the Regional Administrator.

(11) Make a false statement, oral or written, to the Regional Administrator or an authorized officer, regarding the certification, use, operation, or maintenance of a VMS unit used in the fishery.

(12) Fail to allow an authorized officer to inspect and certify a VMS unit used in the fishery.

(b) * * *

(5) Possess on a fishing vessel that has a permit for Crustaceans Permit Area issued under this subpart any lobster trap in Permit Area 2 when fishing for lobster in the main Hawaiian Islands is

prohibited during the months of June, July, and August.

4. In § 660.48, new paragraphs (a)(7) and (a)(8) are added to read as follows:

§ 660.48 Gear restrictions.

(a) * * *

(7) A vessel whose owner has a limited access permit issued under this subpart and has an operating VMS unit that has been certified by the National Marine Fisheries Service may enter Crustaceans Permit Area 1 with lobster traps on board during the closed season, but must remain outside the Crustaceans Permit Area 1 VMS Subarea as defined in § 660.12.

(8) The operator of a permitted vessel must notify the Regional Administrator or an authorized officer no later than June 15 of each year if the vessel will use a VMS unit in the fishery and allow for inspection and certification of the unit.

* * * * *

5. In § 660.50, paragraph (b)(4) is added as follows:

§ 660.50 Harvest limitation program.

* * * * *

(b) * * *

(4) Each permit holder and operator of each permitted vessel will be provided the following information, which will also be published in the Federal Register:

(i) Determination of when the harvest guideline will be reached;

(ii) Closure date after which the possession of lobster traps in Crustaceans Permit Area 1 VMS Subarea is prohibited by permitted vessels carrying VMS units;

(iii) Closure date after which the possession of lobster traps in Crustaceans Permit Area 1 is prohibited by permitted vessels without VMS units; and

(iv) Specification when further landings of lobster taken by permitted vessels without VMS units will be prohibited.

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