

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

2. In § 648.2, the definitions for "Bonito" and "Little tunny" are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

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Bonito means *Sarda sarda*.

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Little tunny means *Euthynnus alletteratus*.

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3. In § 648.14, paragraphs (a)(36) and (a)(43) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (b)(9), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(43) Violate any of the provisions of § 648.80(a)(4), the Cultivator Shoals whiting fishery exemption area; (a)(5), the Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area; (a)(8), Small Mesh Area 1/Small Mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any of these paragraphs is a separate violation.

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4. In § 648.80, paragraph (b)(2)(iii) is revised, and paragraph (b)(9) is added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(2) * * *

(iii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (c), (e), (h), and

(i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82(b)(3), if fishing under a scallop state waters exemption specified in § 648.54, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.81(e).

* * * * *

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY; to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5' N. lat. and 71°50.2' W. long.; east northeast through Block Island, RI, to 41°15' N. lat. and 71°07' W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species provided an exempted fishing permit is obtained from the Highly Migratory Species Division (HMS), Office of Sustainable Fisheries, NMFS, Gloucester, Massachusetts. The HMS reserves the authority to cap the number of participants who retain bonito as allowable incidental species should conservation and/or protected resource concerns develop.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5 inch (13.97 cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under

§ 648.81(e) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

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[FR Doc. 98-20258 Filed 7-24-98; 3:43 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980603145-8186-02; I.D. 052998C]

RIN 0648-AL33

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

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

ACTION: Final rule.

SUMMARY: NMFS issues a 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 allocates the overall 1998 Northwestern Hawaiian Islands (NWHI) harvest guideline of 286,000 lobsters (spiny and slipper combined) among three individual fishing banks and a fourth combined area. Specifically, no more than 70,000 lobsters may be harvested from Necker Island; no more than 20,000 lobsters may be harvested from Gardner Pinnacles; no more than 80,000 lobsters may be harvested from Maro Reef; and no more than 116,000 lobsters may be harvested from all the other remaining NWHI banks combined within Crustaceans Permit Area 1. This rule is intended to protect the lobster resources at each fishing ground, to obtain better data on the lobster stocks, and to conserve the resource.

DATES: This final rule is effective from July 23, 1998 through December 31, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis for this action are available from Alvin Katekaru, Fishery Management

Specialist, Pacific Islands Area Office, NMFS, 2570 Dole St., Honolulu, HI 96822.

FOR FURTHER INFORMATION CONTACT:

Alvin Katekaru at (808) 973-2985 or Kitty Simonds, Executive Director, Western Pacific Fishery Management Council at (808) 522-8220.

SUPPLEMENTARY INFORMATION: On June 9, 1998, NMFS published a proposed rule in the *Federal Register* (63 FR 31406) proposing to reallocate the overall harvest guideline of 286,000 lobsters (spiny and slipper lobster combined) for the 1998 NWHI lobster fishery. The harvest guideline was published in the *Federal Register* on June 3, 1998, at 63 FR 30147. Under this final rule, the 1998 harvest guideline is distributed among four lobster banks/areas whereby no more than 70,000 lobsters may be harvested at Necker Island; no more than 20,000 lobsters may be harvested at Gardner Pinnacles; no more than 80,000 lobsters may be harvested at Maro Reef; and no more than 116,000 lobsters may be harvested from all the other remaining NWHI banks combined. Once a harvest guideline for a specific bank/area (fishing grounds) is reached or projected to be reached, the Southwest Regional Administrator, NMFS, will announce, at least 24 hours in advance, closure of the fishing grounds via electronic communication to each of the vessels participating in the 1998 fishery. The entire lobster fishery will close when the entire harvest guideline of 286,000 lobsters is attained.

The Western Pacific Fishery Management Council (Council) recommended bank/area-specific harvest guidelines as its preferred alternative in the NWHI lobster fishery to help prevent local bank depletion at Necker Island, Gardner Pinnacles, and Maro Reef; to promote broader distribution of fishing effort among the remaining NWHI banks; to obtain better data on the lobster stocks; and to conserve the resource. This action applies only to the 1998 lobster season, which began July 1, 1998, and will end on December 31, 1998.

The Council also considered two other alternatives which were rejected: no action (NWHI-wide fishing area), and full bank-specific harvest guidelines (covering 11 of the 14 lobster grounds for which exploitable population estimates are available). Comments on the proposed rule and on an initial regulatory flexibility analysis (IRFA) and an environmental assessment were solicited through June 24, 1998.

Comments and Responses

No written comments were received from the public on the proposed rule during the comment period.

Changes From the Proposed Rule

There is no change in the regulatory text between the final rule and proposed rule.

Classification

The NMFS prepared a final regulatory flexibility analysis (FRFA) in compliance with the Regulatory Flexibility Act. The FRFA provides additional data/analysis supplementing the IRFA, which was summarized in the *Federal Register* on June 9, 1998 (63 FR 31406). No comments were received from the public on the IRFA; however, written comments were received from the Small Business Administration (SBA) on the IRFA. The FRFA expands the IRFA and responds to comments by SBA.

The final rule applies to a maximum of 12 NWHI lobster fishery limited access permit holders who are small business entities. The ex-vessel revenue of a permit holder, based on a prototypical NWHI lobster vessel, is approximately \$208,000 based on current operating patterns. Lobster vessel captains are required to maintain and submit, after each trip, logsheets containing daily lobster catch and effort information associated with their fishing and, if needed, information on interactions with protected species. While at sea, they must also provide to NMFS daily reports of their catch and lobster fishing effort. A report indicating the ex-vessel revenues obtained from the catch sold must be submitted to NMFS. All lobster fishermen are subject to the same requirement; no special professional skills are needed to identify the species of lobster caught, to record catch and effort, or to submit written or oral reports, as required.

The FRFA analyzes three alternatives for utilizing harvest guidelines in the 1998 fishery. It provides quantitative information for the analyses of the preferred alternative (bank-specific harvest guidelines for four lobster grounds) and two alternative actions (no action and full bank-specific guidelines). The FRFA is based on several assumptions, the validity of which will be tested under the final rule. For example, it is assumed that vessels will move only once to another fishing ground when a harvest guideline is reached, and then return to port; it is assumed that "other remaining NWHI banks", which have not been fished since the early 1990s, will have the

same catch-per-unit-effort as at the traditional fishing grounds (Necker Island, Gardner Pinnacles, Maro Reef); is assumed that market prices for live lobsters and frozen tails are the same as during the previous season; and finally, it is assumed that vessels participating in the 1998 fishery will operate in the same manner as vessels that fished in 1997. For purposes of the FRFA, a "trip" refers to the period of time from when a fishing vessel leaves port until it lands its catch. It is expected that most vessels in this fishery will make one trip during the lobster season.

The expanded analysis in the FRFA shows the relative effect of the three alternatives in a static, prototypical income statement approach (data in the Appendices are shown on a typical single vessel basis). The following percentages reflect the difference between the Preferred Alternative or Full-Bank Alternative and the No Action Alternative. These percentages were calculated using revenue and cost data contained in Appendices A1, A2, and A3 to the FRFA and are summarized in Appendix B. The Preferred Alternative is expected to increase shared operating costs (i.e., all operating costs except crew share and captain's bonus) per trip by roughly 2 percent (\$775) and total costs by about 0.3 percent (\$469). Net revenue per trip is projected to decrease by approximately 1.8 percent (\$470), assuming an increase of two non-fishing days per trip as the fishing vessels are forced to move between the banks/areas as a result of meeting the harvest guideline for any individual bank. No change is expected in annual gross revenue per vessel between the Preferred and No Action Alternatives.

The harvest guideline under the Full-Bank Alternative (i.e., the sum of the specific harvest guidelines for each of 11 lobster grounds where exploitable population estimates are available), which was developed prior to the determination of the 1998 harvest guideline, would be about 6 percent lower than under the No Action Alternative. Therefore, under the Preferred Alternative, *fleet-wide* gross revenue from the lobster fishery would also be roughly 6 percent lower under the Full-Bank Alternative. This could result in an equivalent decrease in annual gross revenue per vessel under the Full-Bank Alternative. Under the Full-Bank Alternative, the lower harvest guideline could be met by vessels taking shorter or fewer trips, and as a result, those vessels would be able to go into another fishery (e.g., NWHI bottomfish or distant-water pelagic longline)

earlier, and thus make up a portion of the decreased gross revenue.

The three alternatives are not expected to affect different sizes of vessels or companies in a differential manner. Compliance costs (shared operating costs) as a percent of total revenue under the Preferred Alternative are expected to increase about 0.4 percent (\$775/trip) compared to the No Action Alternative, and approximately 0.8 percent (\$1,124/trip) under the Full-Bank Alternative.

The economic analysis in the FRFA is based on some reasonable assumptions, however, the actual impacts are impossible to calculate. Based on the expanded analysis of the FRFA, this action is not projected to have a significant economic impact on a substantial number of small entities. Of course, the entire program is tailored after considering the possible negative impacts and weighing those against the possible benefits. On balance, the potential benefits seem to outweigh the potential costs. Therefore, at this time, the agency has not taken any steps to minimize impacts. This final rule action is for 1998 only and this agency will monitor its impacts. If necessary and appropriate, NMFS will consider whether minimizing steps are appropriate in future actions of this type for this fishery.

Under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NMFS, finds good cause to waive the 30-day delay in effectiveness for this rule. In order to ensure the health of the lobster stocks this fishing season, the rule must be in effect as soon as possible; the fishing season started July 1. The allocation of the harvest guidelines themselves does not require action by any fisherman; rather it determines when the Southwest Regional Administrator, NMFS, must close an allocated area. All participants have actual notice of this rule. Therefore, delaying 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.

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 23, 1998.

Rolland A. Schmitt,
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 a 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 1998 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.

* * * * *

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 is operating a VMS unit certified by NMFS.

* * * * *

4. Section 660.48 is amended by suspending paragraph (a)(7) and adding a new paragraph (a)(10), to read as follows:

§ 660.48 Gear restrictions.

(a) * * *

(10) A vessel whose owner has a limited access permit issued under this subpart and has an operating VMS unit certified by NMFS may transit the Crustaceans Permit Area 1, including the 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.

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5. Section 660.50 is amended by suspending paragraph (b)(4) and adding new paragraphs (b)(5) through (b)(8) to read as follows:

§ 660.50 Harvest limitation program.

* * * * *

(b) * * *

(5) For the 1998 fishing season, the following harvest guidelines apply to the four lobster grounds in Crustaceans Permit Area 1:

(i) No more than 70,000 lobsters may be harvested from the Necker Island Lobster Grounds;

(ii) No more than 20,000 lobsters may be harvested from the Gardner Pinnacles Lobster Grounds;

(iii) No more than 80,000 lobsters may be harvested from the Maro Reef Lobster Grounds; and

(iv) No more than 116,000 lobsters may be harvested from the General NWHI Lobster Grounds.

(6) The Regional Administrator, Southwest Region, NMFS, 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 grounds will be reached.

(7) Notice of the date when the harvest guideline for a lobster grounds 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 grounds is prohibited, and the possession of lobster traps on board the vessel in the lobster grounds is prohibited unless allowed under § 660.48(a)(10).

(8) With respect to the notifications in paragraphs (b)(3) and (b)(7) 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 using VMS units certified by NMFS.

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