

50 CFR Part 681

Docket No. 911193-2048

0648-AD82

Western Pacific Crustacean Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This rule establishes a limited access program for the lobster fishery of the Northwestern Hawaiian Islands (NWHI), with vessel permit eligibility based on historical participation in the fishery. A maximum of 15 vessel permits will be effective at any time. Permits will be transferable. Only one permit may be held by any person, except a person who qualifies initially for two or more permits. To further control effort, a maximum of 1100 assembled lobster traps (and up to 100 unassembled replacement traps) may be maintained on board or in the water by any vessel. To further protect lobster stocks, the rule establishes an annual closed season (January 1-June 30) and an annual quota based on the condition of stocks. The rule imposes additional reporting requirements to ensure adequate data to monitor and carry out the limited access and conservation measures for the fishery. The Director, Southwest Region, NMFS (Regional Director), with the concurrence of the Western Pacific Fishery Management Council (Council), may initiate rulemaking to adjust the number of permits, the length of the closed season, the quota, or reporting requirements. The amendment is intended to conserve NWHI lobster stocks and provide the basis for an economically healthy and productive fishery for the long term.

DATES: Effective on April 27, 1992, except § 681.29, which is effective at 0001 hours local time April 10, 1992.

ADDRESSES: Copies of Amendment 7 and the environmental assessment may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

Send comments on the collections 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,

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) 960-4034; or Alvin Z. Katekaru, Pacific Area Office, NMFS Southwest Region, Honolulu, Hawaii (808) 955-8831

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Council and approved and implemented by the Secretary of Commerce (Secretary) in 1983 (48 FR 5560, February 7, 1983). The FMP has been amended six times. The FMP covers fisheries for spiny lobster and slipper lobster in Hawaii, Guam, and American Samoa, but the fishery in the NWHI is more heavily regulated than the other areas. This has been the largest and most dynamic lobster fishery in the region, with peak landings of almost 1,100 metric tons (mt) in 1985. Conservation and management measures have included permits and reporting requirements for fishermen to monitor the fishery, and size limits, area closures, and trap escape vents to conserve the lobster stocks.

As indicated in the proposed rule (56 FR 65209, December 16, 1991) for this amendment, several recent trends in the NWHI lobster fishery are clear. Landings, catch per unit effort (CPUE), and revenues all declined in 1990 after 2 years of relative stability in the fishery. The average size of spiny lobster tails (4-8 oz for 1990) continued to decrease through the year, causing increasing concern among vessel operators. Fleet revenues for 1990 were \$4.9 million, down 22 percent from 1989. Commercial fishing logbooks for the period January-April indicated that CPUE for the period was 0.63 legal lobsters/trap-haul, the lowest ever recorded during that period since 1984 (when such data started being recorded). By comparison, the CPUE for this period in 1990 was 0.84.

Low recruitment to the fishery was first observed at Maro Reef and the banks northwest of Maro, resulting in a decline in CPUE. Fishing effort then intensified at Necker Island and Gardner Pinnacles, resulting in declining lobster stocks in those areas. The 1990 spawning stock biomass of spiny and slipper lobsters in the NWHI was 22 percent of the levels in the late 1970's, prior to the development of the fishery, an indication that the million trap-hauls in 1990 may have been excessive since recruitment to the fishery was low. The FMP defines the threshold for recruitment overfishing at 20 percent of the pre-fishery level. Thus, the status of spawning stock biomass in 1990 was at or near a level that could cause a severe decline in recruitment. In 1991, lobster

fishing continued in the NWHI until the fishery was closed by emergency action on May 8 (56 FR 21961, May 13, 1991), in response to a request from the Council. The closure was subsequently extended for a second 90-day period (56 FR 36012, July 30, 1991).

During the emergency closure, the Council completed an amendment to the FMP to provide long-term conservation. The Council concluded that a combination of limited access and effort and harvest limitations is needed to protect the resource and the industry that depends on it. The amendment and its implementing rule provide for a limited access system, a limit on effort, an annual fleet harvest quota, a closed season, and new reporting requirements. These measures and the rationale for the limited access system are described in detail in the proposed rule and will not be repeated here.

In total, the amendment proposes a comprehensive program of conservation and management measures to ensure the long-term health of the stocks and of the businesses that depend on them.

The seasonal closure becomes effective 15 days after publication of this rule. Timely notice will be given to fishermen on the grounds by the Regional Director to allow a reasonable time to retrieve their gear and exit the fishing grounds. This will allow operators of vessels to retrieve their gear and return to Hawaii to unload their catches. The fishery will then be closed until July 1, 1992, when the first annual quota will be implemented.

The only comments received from the public on this rule were from two fishery participants, who support immediate implementation of the rule, and from the Marine Mammal Commission, which supported approval and implementation of the amendment. The Commission also urged the NMFS reinstate consultations with the Council under Section 7 of the Endangered Species Act (ESA) because the Commission was concerned that the FMP's definition of "overfishing" for lobster stocks could be lower than appropriate for promoting recovery of Hawaiian monk seals in the NWHI. The Commission recommended that the consultations address several concerns. NMFS conducted a review of the proposed amendment relative to Hawaiian monk seals and concluded in informal consultations under the ESA that the amendment will not adversely affect any endangered or threatened species or adversely affect any critical habitat. There was no new information in the Commission's letter to change that conclusion. The Commission's concerns are known to the Council and will be

considered in future planning for the lobster fishery.

This rule is different from the proposed rule in several respects. The proposed definition for "fleet harvest quota" has been deleted because it was deemed superfluous. The definition for "Regional Director" has been amended to note the change in address for the Southwest Region, NMFS. Section 681.31(a)(2) has been revised to clarify that, for 1992, only lobster caught and retained after the season closure becomes effective will count toward the final quota. Other editorial changes have been made to clarify the requirements and prohibitions under the rule. In addition, it should be noted that permit holders will be provided with a copy of a National Weather Service chart, which depicts different combinations of wind and sea conditions. Permit holders should refer to this chart in providing information in fishing logbooks regarding the general condition of sea surface, as required in § 681.5(b)(2)(ix).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that Amendment 7 to the FMP and its implementing rule are necessary for the conservation and management of the crustacean fishery resources of the western Pacific region and are consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Council prepared an environmental assessment (EA) for this amendment that concluded that there will be no significant impact on the environment. Based on this EA, the Assistant Administrator signed a Finding of No Significant Impact. A copy of the EA is available from the Council (see ADDRESSES).

The Assistant Administrator has determined that this final 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 entities. No new information has been obtained or presented to change that certification.

The Council considered the potential effects of this action on endangered and threatened species and concluded that no impacts are likely. The Council initiated informal consultations with NMFS under the Endangered Species Act. NMFS concluded that the action

would not adversely affect any listed species and would not adversely affect any critical habitat.

This rule contains several collection-of-information requirements that are subject to the Paperwork Reduction Act. Information requested from lobster permit applicants is standardized to consolidate into one form the different permits for fisheries in the Western Pacific Region. The public reporting burden for this collection of information is estimated to average 15 minutes per application, including the time to review and complete the form, and return it to NMFS. Corporations or partnerships filing permit applications will complete a supplementary information sheet listing the names of individual owners and their respective ownership shares in the vessel. The reporting burden for this information is estimated to be 30 minutes per application. The standardized permit application form was approved by OMB in conjunction with the Southwest Region Family of Permit Forms (OMB Control No. 0648-0204). A new section is required for reporting weather conditions in the currently approved fishing logbook. The estimated burden is 2 minutes per fishing day. A new information element (tail sizes) is added to the existing processing and sales report requirement. The public burden for completing the new section is estimated to be 5 minutes per trip (trips normally last 1.5 to 3 months). Periodic at-sea reports of catch and effort are required to monitor catches, revise quotas, and close the fishery when the quota is taken. The public burden for these reports is estimated to be 5 minutes per report, including establishing communications and reporting the catch. This may be weekly, daily, or otherwise. The final rule also requires vessel operators to notify NMFS if they are forced to leave traps on the fishing grounds due to an emergency situation. While no such emergencies are predicted, it is estimated that such a report would take less than 5 minutes. A request for clearance of these additional collections of information was approved by OMB (OMB Control No. 0648-0214). Send comments on the burden estimates or any other aspects of these collections of information, including suggestions on how to reduce the burden, to the Director, Southwest Region, NMFS, and the Office of Information Regulatory Affairs, OMB (see ADDRESSES).

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Hawaii.

The State has agreed with this determination.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

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 will establish a seasonal closure (January through June each year). To protect the spawning stocks of lobsters in the first half of 1992, it is desirable to implement this measure as soon as practicable. Therefore, it would be impracticable and contrary to the public interest to delay implementation of this measure any longer than the minimum time necessary. It is necessary to provide time to notify vessel owners and operators of the change in regulations, and to allow operators of vessels on the grounds to complete their trips, retrieve their gear, and return to port to unload their catch. Therefore, the rule balances practicability and the public interest in protecting spawning stocks by providing that further landings of lobster from NWHI will be prohibited 15 days after the date of publication. Other measures will be effective after the 30-day cooling-off period.

List of Subjects in 50 CFR Part 681

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 20, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 681 is amended as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

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

2. In § 681.2 the following definitions for *Final quota*, *Initial quota*, *Owner*, *Pacific Area Office* and *Receiving vessel* are added in alphabetical order, the definition of *Permit Number* is removed, and the definition of *Regional Director* is revised, to read as follows:

§ 681.2 Definitions.

Final quota means the total allowable number of spiny and slipper lobsters

(combined) that may be caught and retained from Permit Area 1 by all permitted vessels in a given year. It is derived by adjusting the initial quota based on catch and effort data from the first month of fishing each year and is published after fishing begins in any year.

Initial quota means the initially determined total allowable number of spiny and slipper lobster (combined) that may be caught and retained from Permit Area 1 by all permitted vessels and is calculated, using the quota formula in the FMP, from previous years' catch and effort information, and published in February each year.

Owner means the person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG-1270) issued by the U.S. Coast Guard for a documented vessel or in a registration certificate issued by a State or Territory or the U.S. Coast Guard for an undocumented vessel.

Pacific Area Office means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii, 96822-2396.

Receiving Vessel means a vessel of the United States to which lobster taken in Permit Area 1 are transferred from another vessel.

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or a designee.

3. In § 681.4, paragraphs (a)(1), (b), and (d) through (h) are revised to read as follows:

§ 681.4 Permits.

(a) *General.* (1) Any vessel of the United States engaged in commercial fishing for lobsters in the Management Area must have a permit issued under this part. Vessels engaged in commercial fishing for lobsters in Permit Area 2 or Permit Area 3 require only a permit issued under this section. Vessels engaged in commercial fishing for lobsters in Permit Area 1 require only a limited access permit issued under § 681.30.

(b) *Applications.* (1) An application for a permit under this section should be submitted to the Pacific Area Office by the vessel owner or a designee of the owner at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on an application form obtained from the Pacific Area Office and must provide the following information:

(i) Type of application: whether the application is for a new permit or a renewal; and what permit area it is for.

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number, mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Official number of the vessel;

(viii) Radio call sign of the vessel;

(ix) Principal port of the vessel;

(x) Length of the vessel;

(xi) Engine horsepower;

(xii) Approximate fish hold capacity;

(xiii) Number of crew (excluding operator);

(xiv) Construction date;

(xv) Date vessel purchased;

(xvi) Purchase price;

(xvii) Type and amount of fishing gear carried on board the vessel;

(xviii) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xix) Signature of the applicant; and

(xx) Date of signature.

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Pacific Area Office at least 10 days before the effective date of the change, or if an unplanned change, within 10 days after the change. Failure to report such changes may result in termination of the permit.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is submitted, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire at 2400 hours local time on December 31 following the effective date of the permit.

(g) *Renewal.* An application for renewal of a permit must be submitted to the Pacific Area Office in the same

manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

4. In § 681.5, paragraph (b)(2)(ix) is redesignated (b)(2)(x), paragraphs (c)(3)(iii) and (c)(3)(iv) are revised, and new paragraphs (b)(2)(ix), (c)(3)(v), and (d) are added to read as follows:

§ 681.5 Recordkeeping and reporting.

(b) . . .

(2) . . .

(ix) General condition of sea surface for each day fished (e.g., wave height, wind speed); and

(c) . . .

(3) . . .

(iii) Weight and revenue from sale of octopus by product type;

(iv) Weight and revenue from sale of other fishery products by type; and

(v) Number of lobsters, by tail weight (in 2-ounce intervals, i.e., 2.0-3.9, 4.0-5.9, etc.), by species.

(d) *Transshipment.* If any receiving vessel is used to transship lobsters from the harvesting vessel to port, then the operator of the receiving vessel must, within 72 hours of landing those lobsters, submit to the Regional Director the original copies of the NMFS Daily Lobster Catch Reports that were completed by the operator of the vessel that harvested the lobster.

§ 681.6 [Amended]

5. In § 681.6, in each place it occurs in paragraph (a), (b) and (c), the word "permit" is replaced by the word "official".

6. In § 681.7, paragraph (b)(1), (c)(1)(i), (c)(1)(ii), and (c)(2) through (c)(4) are revised and new paragraphs (b)(7) through (b)(13) are added, to read as follows:

§ 681.7 Prohibitions.

(b) . . .

(1) Fish for, take, or retain lobsters:

(i) Without a limited access permit issued under § 681.30;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 681.24;

(iii) From closed areas for lobsters, as specified in § 681.23;

(iv) During a closed season, as specified in § 681.29; or

(v) After the date published in the Federal Register, as specified in § 681.31(c) (4) or (5), and until the fishery

opens again in the following calendar year.

(7) When fishing for lobster is prohibited as specified in §§ 681.23, 681.24, 681.29, 681.30, or 681.31, possess on a fishing vessel any lobster trap.

(8) Fail to report catch and effort data, as specified § 681.5.

(9) Leave a trap unattended in the Management Area except as provided in § 681.24(f).

(10) Maintain on board the vessel or in the water, more than 1200 traps per fishing vessel, of which no more than 1100 can be assembled traps, as specified § 681.24(e).

(11) Fail to mark legibly the vessel's official number on all traps and floats maintained on board the vessel or in the water, as specified in § 681.24(g).

(12) Land lobsters taken in Permit Area 1 after the closure date announced in the Federal Register, as specified in § 681.31(c) (4) and (5), and until the fishery opens again in the following calendar year.

(13) Fail to make a limited access permit available for inspection by an authorized officer upon request by that officer.

(c) . . .
(1) . . .

(i) By methods other than lobster traps or by hand, as specified in § 681.44; or
(ii) In the months of June, July, and August, as specified in § 681.43.

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 which is less than the minimum size specified in § 681.41.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 681.45.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 681.42.

7. In subpart B, in § 681.24, paragraphs (e) through (g) are added to read as follows:

§ 681.24 Gear restrictions.

(e) A maximum of 1200 traps per vessel may be maintained on board or in the water, provided that no more than 1100 assembled traps are maintained on board or in the water. If more than 1100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(f) Traps shall not be left unattended in the Management Area, except in the event of an emergency, in which case the vessel operator must notify the

NMFS Law Enforcement Office of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port. The NMFS Law Enforcement Office can be reached 24 hours a day by calling (808) 541-2727.

(g) The vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§§ 681.30 through 681.35 Redesignated as §§ 681.40 through 681.45

8. In subpart C, §§ 681.30 through 681.35 are redesignated §§ 681.40 through 681.45, respectively.

(9) Subpart B is amended by adding new §§ 681.29 through 681.32 to read as follows:

§ 681.29 Closed season.

Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

§ 681.30 Limited access management program.

(a) *General requirements.* (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel under this section. Only one permit will be assigned to any vessel.

(2) A limited access permit is valid for fishing only in Permit Area 1.

(3) The application form for a limited access permit is the same as the application form for a permit under § 681.4(b)(2). If the application is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from the Pacific Area Office and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(4) A maximum of 15 limited access permits can be valid at any time.

(5) No fee is required for a limited access permit.

(6) Any change in the information specified in the application form for a limited access permit must be reported to the Pacific Area Office at least 10 days after the change. Failure to report such changes may result in termination of the permit.

(7) If an incomplete or improperly completed application form is submitted, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the notification, the application will be considered abandoned.

(8) A limited access permit expires at 2400 hours local time on December 31 following the effective date of the permit.

(9) A limited access permit that has been altered, erased, or mutilated is invalid.

(10) A limited access permit may be issued to replace a lost or mutilated permit. An application for a replacement permit is not considered a new application.

(11) A limited access permit must be on board the vessel at all times and is subject to inspection upon request of any authorized officer.

(12) Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(b) *Issuance of initial limited access permits.* (1) An application for an initial limited access permit must be submitted to the Pacific Area Office on the same form used for a permit under § 681.4(b)(2) within 90 days of the effective date of this rule.

(2) The Regional Director will issue initial limited access permits based on the eligibility criteria listed below. An initial permit issued under this paragraph will be issued to the person who owned the vessel when the vessel was last used to land lobsters from Permit Area 1 in 1990. Priority for initial permits will be given, in descending order, to an owner of a vessel that had made at least one landing of lobsters from Permit Area 1:

(i) Before August 8, 1985, and during every calendar year from 1985 through 1990;

(ii) Before August 8, 1985, and during calendar year 1990;

(iii) During 1990 only.

(3) If fewer than 15 initial limited entry permits are issued under paragraph (b)(2) of this section, then the remaining initial permits will be issued to vessel owners based upon a point system.

(i) One point shall be assigned for each calendar year prior to 1985 that the applicant was the owner or operator of a vessel that was used to land lobsters from Permit Area 1.

(ii) Under the point system, applicants will be ranked by the number of points. Available permits will be issued to applicants with the greatest number of points in descending order.

(iii) If two or more applicants have the same number of points and there are insufficient permits for all such applicants, the Regional Director shall issue permits to such applicants through a lottery.

(iv) No points shall be assigned paragraph (b)(3)(i) of this section for

lobster landings by a vessel for which a permit has been issued under paragraph (b)(2) of this section.

(c) *Renewal of limited access permits.*

(1) A person filing an application for renewal of a limited access permit must submit the application by December 31 of the preceding year.

(2) The Regional Director will renew a limited access permit for a subsequent year if the permitted vessel was used to:

(i) Land the equivalent of at least four lobsters for each trap normally used, calculated over one calendar year, and

(ii) Make the landings under paragraph (c)(2)(i) of this section during at least one of the 2 years prior to the year for which the new permit will be valid.

(3) In paragraph (c)(2)(i) of this section, the number of lobsters "for each trap normally used" is calculated by taking the sum of all legal lobsters caught and retained by the harvesting vessel divided by the average number of traps deployed by the vessel based on the logbook records for the calendar year.

(d) *Transfer or sale of limited access permits.* (1) Permits may be transferred or sold, but no one individual, partnership or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits so long as he or she satisfies the landings requirement in paragraph (c)(2)(i) of this section, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, the Pacific Area Office must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of paragraph (a) of this section. The transferred permit is not valid until this process is completed.

(e) *Replacement of a vessel covered by a limited access permit.* An owner of a permitted vessel may, without limitation, transfer his or her limited access permit to another vessel of that owner provided that the replacement vessel is put into service within 12 months after declaring to the Regional Director his or her intent to transfer the permit

(f) *Issuance of limited access permits to future applicants.* (1) The Regional Director may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Director has determined that limited access permits may be issued to new persons, a notice shall be placed in the Federal Register, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) An application for a new limited access permit must be filed within 90 days following the publication of the Federal Register notice.

(4) Limited access permits issued under paragraph (f) of this section will be issued first to applicants qualifying under paragraph (f)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (f)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (f)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph goes to owners of vessels that were used to land lobster from Permit Area 1 during the period from 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Director through a lottery.

(ii) Second priority to receive limited access permits under this paragraph goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Director shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985 that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1;

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the exclusive economic zone surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50 percent share in the vessel that the permit would cover.

§ 681.31 Quota management program.

(a) An initial quota and a final quota will be set annually. The final quota for a calendar year shall:

(1) Apply to the total catch of spiny and slipper lobsters; and

(2) Be expressed in terms of numbers of lobsters. All lobsters caught and retained after April 10, 1992, shall count toward the final quota for the year in which they were caught and retained, regardless of the product form (e.g., alive and dead, whole and tails) in which they are landed.

(b) *Initial quota.* (1) The Regional Director shall use information in commercial fishing logbooks from previous years, and may use information from research sampling and other sources, to establish the initial quota, applying the quota formula of the fishery management plan.

(2) The Assistant Administrator shall publish a notice indicating the initial quota in the Federal Register by February 15 each year, and shall use other means to notify permit holders of the initial quota for the year.

(c) *Final quota.* (1) The Regional Director shall use the catch and effort information provided during July (or the first month of the open season) to determine any change needed to establish the final quota.

(2) If no fishing is conducted during July (or the first month of the open season), then the final quota shall equal the initial quota.

(3) The Assistant Administrator shall publish a notice in the Federal Register indicating the final quota, as soon after August 15 as practicable, and shall use other means to notify permit holders of the final quota for the year.

(4) If the total reported catch by the date that the final quota is announced exceeds the final quota, the Assistant Administrator will publish a notice in the Federal Register not less than 7 days prior to the effective date to prohibit further landings of lobster taken in Permit Area 1.

(5) The Regional Director shall determine on the basis of the evidence available to him the date upon which the quota will be reached or exceeded.

Notice of this determination, with a specification of the date after which further landings of lobster taken in Permit Area 1 will be prohibited, will be published in the Federal Register by the Assistant Administrator not less than 7 days prior to the effective date.

(d) *Monitoring and Adjustment.* The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of

trap hauls) data while at sea to the NMFS in Honolulu. The Regional Director shall notify permit holders of the reporting method, schedule and logistics, at least 30 days prior to the opening of the fishing season.

§ 681.32 Conservation and management adjustments.

If the Regional Director determines that adjustments are warranted, the

Regional Director may, with the Council's concurrence, initiate rulemaking to change the:

(a) maximum number of limited access permits that may be valid at any time;

(b) length of the closed season;

(c) maximum number of traps; or

(d) reporting requirements.

[FR Doc. 92-7025 Filed 3-25-92; 8:45 am]

BILLING CODE 3510-22-M