

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 05/01/2009

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 12/20/2008

ACTION REQUESTED: New collection (Request for a new OMB Control Number)
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200810-0648-012
AGENCY ICR TRACKING NUMBER:
TITLE: Permitting, Vessel Identification, and Reporting Requirements for Deepwater Shrimp Fisheries in the Western Pacific Region
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0586
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 05/31/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	1,020	180	660
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	1,020	180	660
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Deepwater Shrimp Permit Application	NA	Western Pacific Crustaceans Permit Application	50 CFR 665
Shrimp logbooks	NA	Western Pacific Crustaceans Daily Catch Log	50 CFR 665
Vessel identification			50 CFR 665.16

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
PERMIT, VESSEL IDENTIFICATION, AND REPORTING REQUIREMENTS FOR
DEEPWATER SHRIMP FISHERIES IN THE WESTERN PACIFIC REGION
OMB CONTROL NO. 0648-xxxx**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act) established regional fishery management councils, including the Western Pacific Fishery Management Council (Council), to develop fishery management plans for fisheries in the United States (U.S.) exclusive economic zone (EEZ). These plans, if approved by the Secretary of Commerce, are implemented by Federal regulations, which are enforced by the National Oceanic and Atmospheric Administration (NOAA) Fisheries Office for Law Enforcement (OLE) and the United States Coast Guard (USCG), in cooperation with State agencies to the extent possible. The fishery management plans are intended to regulate fishing to ensure sustained productivity and achievement of optimum yield from the resources for the benefit of the United States.

The preferred alternative recommended by the Council creates a new collection-of-information requirement. Fishermen who fish for or deepwater shrimp (*Heterocarpus* spp.) would be required under Federal regulations to obtain a Federal permit and to submit Federal logbooks to the National Marine Fisheries Service (NMFS).

The information collected would be used to document fishing activities and landings, to determine the condition of the stocks, to assess the effectiveness of management measures, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to accidental takes of endangered and threatened species, including seabirds, sea turtles, and marine mammals.

Vessel owners are required to comply with Federal vessel identification requirements that are intended to assist in aerial and at-sea enforcement of fishing regulations.

This is a new request related to Proposed Rule, Regulation Identifier Number (RIN) 0648-AV29, published on August 22, 2008 and Final Rule published on November 21, 2008, possibly to be merged in the future with Office of Management and Budget (OMB) Control No. 0648-0490, Pacific Islands Region Permit Family of Forms, OMB Control No. 0648-0214, Pacific Islands Region Logbook Family of Forms, and OMB Control No. 0648-0360, Pacific Islands Region Vessel and Gear Identification Requirements.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Permits

Information is collected via a NMFS permit application process. Permits are valid for one calendar year and may be renewed annually. Information from the permit application form will allow NMFS to confirm the identity of the permit holder and applicant, and to determine whether the applicant qualifies for the permit. Vessel-related information such as vessel documentation or registration, ownership, managing ownership, etc., are used by NMFS to determine whether the applicant is an owner of a U.S. documented/registered vessel. The information may also be used by OLE, USCG, and the Council.

Logbooks

The completed logbook forms are required to be submitted to NMFS by vessel owners or operators within 72 hours after the end of each fishing trip. The reporting requirements provide the information needed by NMFS and the Council to regulate and monitor the fisheries managed under the Fishery Management Plan (FMP) and to evaluate the effectiveness of management by assessing the status of stocks and the status of the fisheries. The information provides a basis for determining whether changes in management are needed to sustain the productivity of the stocks. The information is also used to provide the basis for evaluating the magnitude and distribution of impacts resulting from changes to the regulations. Information from the logbooks is used by fishery and enforcement officials of NMFS and USCG to monitor compliance with fishing regulations and reporting requirements.

Vessel Identification

In the domestic western Pacific region fisheries regulated under 50 CFR Part 665, the vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck. It identifies each vessel and should be visible at distances at sea and in the air. The requirements generally affect vessels registered to permits for pelagic fisheries, crustacean fisheries, bottomfish and seamount groundfish fisheries, and precious coral fisheries in the western Pacific region. Regulations in 50 CFR Part 665.16 specify the requirements for the vessel identification.

The identification number provides law enforcement personnel with a means to monitor fishing, at-sea processing, and other related activities, to ascertain whether the vessel's observed activities are in accordance with those authorized for that vessel. The information is strictly for enforcement purpose or use by NMFS internally in situations involving damage, loss, and civil proceedings.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with Federal law and regulations, and NOAA policies for confidentiality, privacy, and electronic information. See response to Question No. 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to

dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Permits and Logbooks

At this time, the information will be collected on paper forms and does not require any knowledge of automated, electronic, mechanical or other forms of information technology. There is the possibility of allowing participants to submit their permit applications and logbooks online but this would only be an option. No such logbook option has been developed at this time for this fishery. A web-based national fisheries permit system is currently under development.

Once this information collection request is approved, the permit application forms will be posted at http://www.fpir.noaa.gov/SFD/SFD_permits_11.htm for downloading, filling and printing. Logbook and instructions will be provided by NMFS via U.S. mail with issued Federal squid jig permits.

Vessel Identification

Vessel identification is done manually.

4. Describe efforts to identify duplication.

Permits

There is no similar Crustaceans FMP deepwater shrimp permit requirement for vessels fishing in EEZ waters of the western Pacific region.

Logbooks

There is no similar comprehensive catch and effort reporting program for deepwater shrimp vessels fishing in EEZ waters of the western Pacific region.

NMFS carefully considered whether there were collections by other Federal agencies or state or territorial agencies that might meet the information needs presented above. It was concluded that no other collections, besides the requested information, would meet these reporting requirements.

Vessel Identification

The information is not duplicative; it is a unique requirement for vessels registered to a Federal crustaceans fishing permit in the western Pacific region.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Federal crustaceans FMP deepwater shrimp permit applications would be available online at http://www.fpir.noaa.gov/SFD/SFD_permits_index.html or by contacting the Sustainable Fisheries permits program at NMFS Pacific Islands Regional Office, to reduce the burden of time spent applying or ordering by mail. Applications may be downloaded, printed, and then mailed to NMFS. Permits will be issued by NMFS and delivered via U.S. mail.

Logbook and instructions would be provided by NMFS via U.S. mail with issued Pacific Crustacean FMP deepwater shrimp permits to reduce time spent obtaining forms via an office visit. The Fisheries Monitoring and Analysis Program at the Pacific Islands Fisheries Science Center in Honolulu may be contacted in writing by email, fax, or mail to answer questions about filling out the logsheets or sales reports. Contact information will be provided with the logbook.

Vessel identification instructions provided by NMFS are straightforward and the task of applying the identification marks is simple to minimize the burden of meeting the requirements.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Permits

Without this collection or if it is collected less frequently, NMFS will be unable to properly evaluate activity, participation, and reporting compliance in the western Pacific commercial deepwater shrimp fishery. It will be difficult to monitor the fisheries and their participants, determine entry and exit patterns, and provide information needed to ensure full impact analysis for fisheries management programs. Without this information enforcement agents will not be able to identify current fishery participants for compliance monitoring purposes and NMFS would be unable to consult with permit holders on regulatory changes.

Logbooks

Logbook reporting is needed in the western Pacific deepwater shrimp fishery to get an accurate count of the effort level, amount of harvest, and volume in this fishery.

Vessel Identification

Vessel identification and verification of activity via air and surface patrol would be difficult for enforcement agencies.

Without the information collected by means of the permit applications, logbook reports and, vessel identification, NMFS and the Council would be unable to determine whether management is achieving the objectives of the FMP and the Magnuson-Stevens Act.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

None.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A proposed rule, RIN 0648-AV29, published on August 22, 2008 (73 FR 49638), solicited public comments on this submission. No substantive comments on the proposed collection of information were received. A final rule (73 FR 70603) was, published on November 21, 2008.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided

10. Describe any assurance or confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Under Section 402(b) of the Magnuson-Stevens Act, amended in 2006, and NOAA Administrative Order 216-100, information submitted in accordance with regulatory requirements under the Act is confidential. This includes personal and proprietary information contained in the permits and logbooks.

Although the vessel identification number is not confidential it will not be disseminated to the public.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions are asked of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Permits

NMFS expects to receive up to 10 permit applications for commercial deepwater permits each year. Applicants are expected to spend 30 minutes completing the application, and renewing a permit would require an additional 30 minutes annually. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at 5 hours per year.

Logbooks

NMFS estimates that the time requirement for completing Federal catch reports to be approximately 10 minutes per vessel per fishing day. Assuming that 10 vessels make 100 trips per year, the program would generate up to 1,000 daily fishing logbooks per year. Thus, the total

collection-of-information burden estimate for fishing data reporting is estimated at 167 hours per year.

Total number of logbooks: 10 vessels x 100 trips = 1,000 logbook per year
Total hours: 1,000 logbooks x 10/60 min per logbook = 167 hours per year.

Vessel Identification

For the vessel identification requirements, the burden is estimated at 45 minutes to paint each vessel. Assuming 10 vessels are active, the total collection-of-information burden estimate is 7.5 (8) hours (45/60 x 10).

Summary of Responses and Burden

Total Responses: 10 applications + 1,000 logbooks + 10 markings = 1,020

Total Burden Hours: 5 + 167 + 8 = 180.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

There is no “start up” capital cost for complying with this requirement. Paper forms provided by NMFS will be used by the respondents for providing information. Electronic forms are an option that will be provided later, but would be voluntary on the respondent’s part and presumably would be used only if the respondent already possessed the requisite equipment. The maximum estimated cost to respondents for postage, faxes, copies, etc., related to this collection is \$560 per year, or about \$.55 per response, for permit and logbook costs.

For the vessel identification requirements, the cost is estimated at about \$10 for paint and supplies to paint each vessel, or a total of \$100 annually.

Total annual costs: \$560 + \$100 = \$660.

14. Provide estimates of annualized cost to the Federal government.

Permits and Logbooks

The estimated annual cost to the Federal government to administer this collection of information is up to \$5,220. This includes the cost to process permit applications and issue permits at \$100 per year (10 permits x 30 min/permit x \$20/hr), printing daily catch and effort logsheet forms at \$120 per year (1,000 logsheets and sales reports x \$0.12 per sheet), and processing of log forms at \$5,000 per year, which is calculated by the cost of staff time for receiving and entering logsheet form data (1,000 logsheets x 15 min/logsheet x \$20/hr).

There are no costs for the vessel identification requirement.

15. Explain the reasons for any program changes or adjustments.

This is a new program.

16. For collections whose results will be published, outline the plans for tabulation and publication.

No formal scientific publications based on these collections are planned at this time. NMFS and the Council will use the data (primarily in an aggregated, non-confidential format) for developing management reports and fishery management plan amendments and evaluations. However, subsequent use of the data collected over a series of years may include scientific papers and publications.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

N/A.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

N/A.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical methods are employed.



FEDERAL FISHERIES PERMIT APPLICATION FORM

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

OMB Control No: 0648-0xxx

Expiration Date: xx/xx/xxxx

PACIFIC ISLANDS REGION

200x

Mail or deliver this application to:

NMFS Pacific Islands Regional Office
ATTN: Permits
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4733
Tel: (808) 944-2200; FAX: (808) 973-2940

WESTERN PACIFIC CRUSTACEANS PERMIT

Crustacean Fisheries of the Western Pacific Region

Please Print Legibly. Items marked with * are required. Please fill in other items as completely as possible. Note required documents at bottom of page.

*PERMIT TYPE: Lobster; Deepwater Shrimp (check only one)

*PERMIT AREA: 1. Northwestern Hawaiian Islands OR 2. Main Hawaiian Islands (cannot have both)
(Limited Entry permit required for Lobster in Permit Area 1)
3. American Samoa, Guam and Northern Mariana Islands; 4. Pacific Remote Island Areas

*VESSEL NAME: *VESSEL OFFICIAL NO: (USCG or CNMI number)

*VESSEL LENGTH OVERALL: (feet) RADIO CALL SIGN:

*VESSEL OWNER: First, Middle, & Last Name or Business Name Taxpayer Identification Number
(*If a business owns the vessel)

*DATE OF BIRTH OR INCORPORATION:

Privacy Act Statement: Federal Regulations (at 50 CFR Part 665) authorize collection of this information. This information is used to verify the identity of the applicant(s) and to accurately retrieve confidential records related to federal commercial fishery permits.

*BUSINESS CONTACT: /TITLE: (First, Middle, & Last Name, if not same as vessel owner) (Corporate Officer, Business Owner, Partner)

*BUSINESS MAILING ADDRESS: Street/PO Box City State ZIP Code

*BUSINESS PHONE () ; CELL PHONE () FAX ()

EMAIL:

*APPLICANT: Printed Name and Signature of Person Submitting Application *DATE:

*APPLICANT TITLE: Vessel owner, Permit holder, Corporate Officer or Partner, Designated Agent, or Other (Check only one)

*Application is for a new permit? or a renewal?

REQUIRED DOCUMENTS: You must submit the following with the application form:

- 1) A copy of the vessel's current U.S. Coast Guard Certificate of Documentation (documented vessel) or registration certificate from a state/territorial agency (undocumented vessel) showing the current vessel owner,
2) Payment by check for the non-refundable application processing fee of \$__, payable to Department of Commerce, NOAA, and
3) A signed letter from the permit holder authorizing the applicant as the agent, if the applicant is acting as an agent for the vessel owner.

It is prohibited to file false information on any application for a fishing permit (50 CFR § 665.15(b)).

PAPERWORK REDUCTION ACT INFORMATION

Public reporting burden for this collection is estimated as follows: 30 minutes for the WP crustaceans permit application and 2 hours for all permit denial appeals. Each burden includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to NMFS Pacific Islands Regional Administrator, 1601 Kapiolani Blvd. Suite 1110, Honolulu, Hawaii 96814-4700.

This information is being collected to ensure accurate and timely records about the persons licensed to participate in fisheries under Federal regulations in the Western Pacific Region. This will enable NMFS and the Western Pacific Fishery Management Council to (a) determine who would be affected by changes in management; (b) inform license holders of changes in fishery regulations; and (c) determine whether the objectives of the fishery program are being achieved by monitoring entry and exit patterns and other aspects of the fisheries. The information is used in analyzing and evaluating the potential impacts of regulatory changes on persons in the regulated fisheries as well as in related fisheries. Responses to the collection are required to obtain the benefit of a license for the fishery involved (ref. 50 CFR 665.13). Data provided concerning the vessel and/or businesses of the respondents are handled as confidential under the Magnuson-Stevens Fishery Conservation and Management Act (Sec. 402(b)). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

No. _____

OMB Control No. 0648-0xxx
Expiration Date: xx/xx/xxxx



**NATIONAL MARINE FISHERIES SERVICE
PACIFIC ISLANDS REGION**



WESTERN PACIFIC CRUSTACEAN DAILY CATCH REPORT LOG

Name of Vessel: _____ Crustacean Permit No. _____

Number of Crew: _____ Start Latitude: _____ Start Longitude: _____

Wave Height: 0-2 ft. 2-4 ft. 4-6 ft. 6-8 ft. 8-10 ft. 10-15 ft. >15 ft.

Depth of set (fathoms): _____ Sea Surface Temp. (°F): _____ Wind Speed (knots): _____

Date Gear Set: _____ Time Begin Set (24 hr clock): _____ # Traps Set: _____

Date Gear Haul: _____ Time End Haul (24 hr clock): _____ # Traps Haul: _____

Traps Lost: _____

CATCH INFORMATION

Species	NUMBER KEPT		NUMBER DISCARDED	
	Non-berried	Berried	Non-Berried	Berried
Spiny Lobster (specify species)				
Slipper Lobster (specify species)				
Deepwater Shrimp (<i>Heterocarpus spp.</i>) (specify species)				
Kona Crab (<i>Ranina ranina</i>)				
Octopus				
Other (specify species)				
Other (specify species)				

PROTECTED SPECIES OBSERVATIONS

(enter seal and turtle numbers; identify "Other" in appropriate box)	Monk Seal	Turtle	Other
Observed in area			
Observed in vicinity of gear			
Interfering with fishing operations			
Preying on released lobsters			
Entangled and released alive			
Entangled and released dead			

Logged by Vessel Captain: _____ Date: _____

Print Name: _____ Signature: _____

Submit report to: NMFS Pacific Islands Fisheries Science Center, ATTN: FMAP, 2570 Dole Street, Honolulu, HI 96822.

Western Pacific Crustacean Daily Catch Report

Paperwork Reduction Act Information:

Public reporting burden for this collection is estimated at 10 minutes per response, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Regional Administrator, NMFS Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

This information is being collected to ensure accurate and timely records about the fishing activity of persons licensed to participate in fisheries under Federal regulations in the western Pacific region. This will enable the National Marine Fisheries Service and the Western Pacific Fishery Management Council to (a) determine how those persons would be affected by changes in management; (b) ensure that they are informed about prospective changes in fishery regulations and the analysis of estimated impacts; and (c) determine whether the objectives of the fishery program are being achieved by monitoring the fishery and evaluating the impacts on stocks, the fishery participants, and related businesses. Responses to the collection are required to obtain the benefit of a license for the fishery involved (ref. 50 CFR 665.13). Data provided concerning the activities and business of the respondents are handled as confidential under the Magnuson-Stevens Fishery Conservation and Management Act (Sec. 402(b)). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

109-479

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

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(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

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(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

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(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

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(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

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(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

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(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

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(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

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(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

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(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

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(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

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SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

16 U.S.C. 1853a
MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

104-297

SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

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(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

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(d) **CONTRACTING AUTHORITY.**—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) **RESOURCE ASSESSMENTS.**—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

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SEC. 403. OBSERVERS

16 U.S.C. 1881b

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

Title 50: Wildlife and Fisheries
PART 665—FISHERIES IN THE WESTERN PACIFIC

Subpart B—Western Pacific Fisheries—General

Source: 61 FR 34572, July 2, 1996, unless otherwise noted. Redesignated at 71 FR 17989, Apr. 10, 2006.

§ 665.11 Purpose and scope.

(a) This subpart contains regulations that are common to all Western Pacific fisheries managed under fishery management plans prepared by the Western Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations specific to individual fisheries are included in subparts C, D, E, F, and G of this part.

(c) Nothing in subparts C, D, E, F, and G of this part is intended to supercede any valid state or Federal regulations that are more restrictive than those published here.

[61 FR 34572, July 2, 1996, as amended at 69 FR 8341, Feb. 24, 2004; 71 FR 17989, Apr. 10, 2006]

§ 665.12 Definitions.

[Link to an amendment published at 73 FR 70602, Nov. 21, 2008.](#)

[Link to an amendment published at 73 FR 70604, Nov. 21, 2008.](#)

In addition to the definitions in the Magnuson-Stevens Act, and in §665.10, the terms used in subparts B through G of this part have the following meanings:

American Samoa longline limited access permit means the permit required by §665.21 to use a vessel shoreward of the outer boundary of the EEZ around American Samoa to fish for Pacific pelagic management unit species using longline gear or to land or transship Pacific pelagic management unit species that were caught in the EEZ around American Samoa using longline gear.

American Samoa pelagics mailing list means the list maintained by the Pacific Islands Regional Office of names and mailing addresses of parties interested in receiving notices of availability for American Samoa longline limited access permits.

Basket-style longline gear means a type of longline gear that is divided into units called "baskets" each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

Bottomfish FMP means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region.

Bottomfish management area means the areas designated in §665.69.

Bottomfish management unit species means the following fish:

Common name	Local name	Scientific name
Snappers:		
Silver jaw jobfish	Lehi (H); palu-gustusilvia (S)	<i>Aphareus rutilans.</i>
Gray jobfish	Uku (H); asoama (S)	<i>Aprion virescens.</i>
Squirrelfish snapper	Ehu (H); palu-malau (S)	<i>Etelis carbunculus.</i>
Longtail snapper	Onaga, ulaT lula (H); palu-loa (S)	<i>Etelis coruscans.</i>
Blue stripe snapper	Ta'ape (H); savane (S); funai (G)	<i>Lutjanus kasmira.</i>
Yellowtail snapper	Palu-i iusama (S); yellowtail kalekale	<i>Pristipomoides auricilla.</i>
Pink snapper	Opakapaka (H); Palu-`tlena` lena (S); gadao (G)	<i>Pristipomoides.</i>
Yelloweye snapper	Palusina (S); yelloweye opakapaka	<i>Pristipomoides flavipinnis.</i>
Snapper	Kalekale (H)	<i>Pristipomoides sieboldii.</i>
Snapper	Gindai (H,G); palu-sega (S)	<i>Pristipomoides zonatus.</i>
Jacks:		
Giant trevally	White ulua (H); tarakito (G); sapo-anae (S)	<i>Caranx ignobilis.</i>
Black jack	Black ulua (H); tarakito (G); tafauli (S)	<i>Caranx lugubris.</i>
Thick lipped trevally	Pig ulua (H); butaguchi (H)	<i>Pseudocaranx dentex.</i>
Amberjack	Kahala (H)	<i>Seriola dumerili.</i>
Groupers:		
Blacktip grouper	Fausi (S); gadau (G)	<i>Epinephelus fasciatus.</i>
Sea bass	Hapu`upu`u (H)	<i>Epinephelus quernus.</i>
Lunartail grouper	Papa (S)	<i>Variola louti.</i>
Emperor fishes:		
Ambon emperor	Filoa-gutumumu (S)	<i>Lethrinus amboinensis.</i>
Redgill emperor	Filoa-palo`omumu (S); mafuti (G)	<i>Lethrinus rubrioperculatus.</i>

Notes: G—Guam; H—Hawaii; S—American Samoa.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1 of this part).

Circle hook means a fishing hook with the point turned perpendicularly back towards the shank.

Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade. All lobster fishing in Crustaceans Permit Area 1 is considered commercial fishing.

Commonwealth of the Northern Mariana Islands (CNMI) means Northern Mariana Islands.

CNMI offshore area means the portion of the U.S. EEZ around the CNMI extending seaward from a line drawn 3 nautical miles from the baseline around the CNMI from which the territorial sea is measured, to the outer boundary of the U.S. EEZ, which to the south means those points which are equidistant between Guam and the island of Rota in the CNMI.

Council means the Western Pacific Fishery Management Council.

Coral reef ecosystem management unit species (Coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa listed in Table 3 and Potentially Harvested Coral Reef Taxa listed Table 4 of this part and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

Coral reef ecosystem regulatory area means the U.S. EEZ waters around American Samoa, Guam, Hawaii, CNMI and the PRIA except for the portion of EEZ waters 0–3 miles around the CNMI, and EEZ waters around the NWHI west of 160°50'W. long.

Crustaceans FMP means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region.

Crustaceans management area means the EEZ waters around American Samoa, the CNMI, Guam, Hawaii, and the PRIA.

Crustaceans management unit species means spiny lobster (*Panulirus marginatus* or *Panulirus penicillatus*), slipper lobster (family *Scyllaridae*), and Kona crab (*Ranina ranina*).

Crustaceans Permit Area 1 (Permit Area 1) means the EEZ off the Northwestern Hawaiian Islands.

Crustaceans Permit Area 2 (Permit Area 2) means the EEZ off the main Hawaiian Islands.

Crustaceans Permit Area 3 (Permit Area 3) means the EEZ around Guam and American Samoa, and the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

Crustaceans Permit Area 4 (Permit Area 4) means the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

Crustaceans Permit Area 1 VMS Subarea means an area within the EEZ off the NWHI 50 nm 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.; Garner 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. The remainder of the VMS subarea is delimited by parallel lines tangent to and connecting the 50–nm areas around the following: from Nihoa Island to Necker Island; from French Frigate Shoals to Gardner Pinnacles; from Gardner Pinnacles to Maro Reef; from Laysan Island to Lisianski Island; and from Lisianski Island to Pearl and Hermes Reef.

Crustaceans receiving vessel means a vessel of the United States to which lobsters taken in the crustaceans management area are transferred from another vessel.

Currently harvested coral reef taxa (CHCRT) means coral reef associated species, families, or subfamilies, as described in Table 3 of this part, that have annual landings greater than 454.54 kg (1,000 lb) as reported on individual state, commonwealth, or territory catch reports or through creel surveys. Fisheries and research data from many of these species have been analyzed by regional management agencies.

Dead coral means any precious coral that no longer has any live coral polyps or tissue.

Deep-set or Deep-setting means the deployment of, or deploying, respectively, longline gear in a manner consistent with all the following criteria: with all float lines at least 20 meters in length; with a minimum of 15 branch lines between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); without the use of light sticks; and resulting in the possession or landing of no more than 10 swordfish (*Xiphias gladius*) at any time during a given trip. As used in this definition "float line" means a line used to suspend the main longline beneath a float and "light stick" means any type of light emitting device, including any fluorescent "glow bead", chemical, or electrically powered light that is affixed underwater to the longline gear.

EFP means an experimental fishing permit.

First level buyer means:

- (1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit or is otherwise regulated under subpart D of this part; or
- (2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

Fish dealer means any person who:

- (1) Obtains, with the intention to resell, Pacific pelagic management unit species, or portions thereof, that were harvested or received by a vessel that holds a permit or is otherwise regulated under subpart E of this part; or
- (2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such management unit species (such as the services provided by a wholesale auction facility).

Fishing gear, as used in subpart D of this part, includes:

- (1) *Bottom trawl*, which means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed.
- (2) *Gillnet*, (see §600.10).
- (3) *Hook-and-line*, which means one or more hooks attached to one or more lines.
- (4) *Set net*, which means a stationary, buoyed, and anchored gill net.
- (5) *Trawl*, (see §600.10).

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31, with the exception of fishing for Hawaii Restricted Bottomfish Species.

Freeboard means the straight-line vertical distance between a vessel's working deck and the sea surface. If the vessel does not have gunwale door or stern door that exposes the working deck, freeboard means the straight-line vertical distance between the top of a vessel's railing and the sea surface.

Guam bottomfish permit means the permit required by §665.61(a)(4) to use a large vessel to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea of the bottomfish fishery management area.

Harvest guideline means a specified numerical harvest objective.

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

Hawaii longline limited access permit means the permit required by §665.21 to use a vessel to fish for Pacific pelagic management unit species with longline gear in the EEZ around Hawaii or to land or transship longline-caught Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

Hawaii restricted bottomfish species fishing year 2008–09 and After means the year beginning at 0001 HST on September 1 and ending at 2400 HST on August 31 of the next calendar year.

Hookah breather means a tethered underwater breathing device that pumps air from the surface through one or more hoses to divers at depth.

Incidental catch or *incidental species* means species caught while fishing for the primary purpose of catching a different species.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under subpart D of this part, and any person who has notified the Regional Administrator of his or her interest in the procedures and decisions described in §§665.51 and 665.52, and who has specifically requested to be considered an “interested party.”

Land or *landing* means offloading fish from a fishing vessel, arriving in port to begin offloading fish, or causing fish to be offloaded from a fishing vessel.

Large vessel means, as used in §§665.22, 665.37, 665.38, 665.61, 665.62, and 665.70, any vessel equal to or greater than 50 ft (15.2 m) in length overall.

Length overall (LOA) or length of a vessel means, as used in §§665.21(i) and 665.22, the horizontal distance, rounded to the nearest foot (with any 0.5 foot or 0.15 meter fraction rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 to this part). “Stem” is the foremost part of the vessel, consisting of a section of timber or fiberglass, or cast forged or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. “Stern” is the aftermost part of the vessel.

Live coral means any precious coral that has live coral polyps or tissue.

Live rock means any natural, hard substrate, including dead coral or rock, to which is attached, or which supports, any living marine life-form associated with coral reefs.

Lobster closed area means an area of the EEZ that is closed to fishing for lobster.

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

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

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

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

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

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in §665.26.

Longline fishing vessel means a vessel that has longline gear on board the vessel.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nm in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Low use marine protected area (MPA) means an area of the U.S. EEZ where fishing operations have specific restrictions in order to protect the coral reef ecosystem, as specified under area restrictions.

Main Hawaiian Islands means the islands of the Hawaiian Islands Archipelago lying to the east of 161° W. long.

Main Hawaiian Islands Non-Commercial Bottomfish Permit means the permit required by §665.61(a)(4) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any bottomfish management unit species in the Main Hawaiian Islands Management Subarea.

Non-commercial fishing means fishing that does not meet the definition of commercial fishing.

Non-precious coral means any species of coral other than those listed under the definition for precious coral in this section.

Non-selective gear means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

Northwestern Hawaiian Islands (NWHI) means the islands of the Hawaiian Islands Archipelago lying to the west of 161° W. long.

No-take MPA means an area of the U.S. EEZ that is closed to fishing for or harvesting of management unit species, precious corals and seamount groundfish, as defined in this section.

Offloading means removing management unit species from a vessel.

Offset circle hook means a circle hook in which the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

Owner, as used in subparts C and D of this part and §665.61(i) through (m), means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state, a territory, or the USCG for an undocumented vessel. As used in subpart F of this part and §665.61(c) through (h), the definition of “owner” in §600.10 of this chapter continues to apply.

Pacific Pelagic Management Unit Species means the following fish:

Common name	Scientific name
Mahimahi (dolphinfish)	<i>Coryphaena spp.</i>
Indo-Pacific blue marlin	<i>Makaira mazara</i>
Black marlin	<i>M. indica</i>
Striped marlin	<i>Tetrapturus audax</i>
Shortbill spearfish	<i>T. angustirostris</i>
Swordfish	<i>Xiphias gladius</i>
Sailfish	<i>Istiophorus platypterus</i>
Pelagic thresher shark	<i>Alapias pelagicus</i>
Bigeye thresher shark	<i>Alopias</i>
Common thresher shark	<i>Alopias vulpinus</i>
Silky shark	<i>Carcharhinus falciformis</i>
Oceanic whitetip shark	<i>Carcharhinus longimanus</i>
Blue shark	<i>Prionace glauca</i>
Shortfin mako shark	<i>Isurus oxyrinchus</i>
Longfin mako shark	<i>Isurus paucus</i>
Salmon shark	<i>Lamna ditropis</i>
Albacore	<i>Thunnus alalunga</i>
Bigeye tuna	<i>T. obesus</i>
Yellowfin tuna	<i>T. albacore</i>
Northern bluefin tuna	<i>T. thynnus</i>
Skipjack tuna	<i>Katsuwonus pelamis</i>
Kawakawa	<i>Euthynnus affinis</i>
Wahoo	<i>Acanthocybium solandri</i>
Moonfish	<i>Lampris spp.</i>
Oilfish family	<i>Gempylidae</i>
Pomfret	family <i>Bramidae</i>
Other tuna relatives	<i>Auxis spp.</i> , <i>Scomber spp.</i> ; <i>Allothunus spp.</i>

Pacific Islands Regional Office (PIRO) means the headquarters of the Pacific Islands Region, NMFS, located at 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814; telephone number (808) 944-2200.

Pacific Remote Island Areas (PRIA) bottomfish fishing permit means the permit required by §665.61 to use a vessel to fish for bottomfish management unit species (MUS) in the EEZ around the PRIA, or to land bottomfish MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

Pacific Remote Island Areas (PRIA) crustacean fishing permit means the permit required by §665.41 to use a vessel to fish for crustacean management unit species (MUS) in the EEZ around the PRIA, or to land crustacean MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

Pacific Remote Island Areas (PRIA) pelagic troll and handline fishing permit means the permit required by §665.21 to use a vessel shoreward of the outer boundary of the EEZ around the PRIA to fish for Pacific pelagic management unit species using pelagic handline or troll fishing methods.

Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean) means Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll.

Pelagic handline fishing means fishing for pelagic management unit species from a stationary or drifting vessel using hook and line gear other than longline gear.

Pelagic troll fishing (trolling) means fishing for pelagic management unit species from a moving vessel using hook and line gear.

Pelagics FMP means the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region.

Potentially harvested coral reef taxa (PHCRT) means coral reef associated species, families, or subfamilies, as listed in Table 4 of this part, for which little or no information is available beyond general taxonomic and distribution descriptions. These species have either not been caught in the past or have been harvested annually in amounts less than 454.54 kg (1,000 lb). Coral reef ecosystem management unit species that are not listed as management unit species, precious corals, seamount groundfish, as defined in this section, or listed as CHCRT in Table 3 of this part.

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

Common name	Scientific name
Pink coral (also known as red coral)	<i>Corallium secundum</i> .
Pink coral (also known as red coral)	<i>Corallium regale</i> .
Pink coral (also known as red coral)	<i>Corallium laauense</i> .
Gold coral	<i>Gerardia</i> spp.
Gold coral	<i>Callogorgia gilberti</i> .
Gold coral	<i>Narella</i> spp.
Gold coral	<i>Calyptrophora</i> spp.
Bamboo coral	<i>Lepidisis olapa</i> .
Bamboo coral	<i>Acanella</i> spp.
Black coral	<i>Antipathes dichotoma</i> .
Black coral	<i>Antipathes grandis</i> .
Black coral	<i>Antipathes ulex</i> .

Precious coral permit area means the area encompassing the precious coral beds in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

- (1) *Established beds*. (i) Makapu'u (Oahu), Permit Area E-B-1, includes the area within a radius of 2.0 nm of a point at 21°18.0' N. lat., 157°32.5' W. long.
(ii) Au'au Channel (Maui), Permit Area E-B-2, includes the area west and south of a point at 21°10' N. lat., 156°40' W. long., and east of a point at 21° N. lat., 157° W. long., and west and north of a point at 20°45' N. lat., 156°40' W. long.
- (2) *Conditional beds*. (i) Keahole Point (Hawaii), Permit Area C-B-1, includes the area within a radius of 0.5 nm of a point at 19°46.0' N. lat., 156°06.0' W. long.
(ii) Kaena Point (Oahu), Permit Area C-B-2, includes the area within a radius of 0.5 nm of a point at 21°35.4' N. lat., 158°22.9' W. long.
(iii) Brooks Bank, Permit Area C-B-3, includes the area within a radius of 2.0 nm of a point at 24°06.0' N. lat., 166°48.0' W. long.
(iv) 180 Fathom Bank, Permit Area C-B-4, N.W. of Kure Atoll, includes the area within a radius of 2.0 nm of a point at 28°50.2' N. lat., 178°53.4' W. long.
- (3) *Refugia*. Westpac Bed, Permit Area R-1, includes the area within a radius of 2.0 nm of a point at 23°18' N. lat., 162°35' W. long.
- (4) *Exploratory areas*. (1) Permit Area X-P-H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.
(ii) Permit Area X-P-AS includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.
(iii) Permit Area X-P-G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.
(iv) Permit Area X-P-PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.
(v) Permit Area X-P-CNMI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

Protected species means an animal protected under the MMPA, listed under the ESA, or subject to the Migratory Bird Treaty Act, as amended.

Protected species study zones means the waters within a specified distance, designated by the Regional Administrator pursuant to §665.66, around the following islands of the NWHI and as measured from the following coordinates: 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 Island 28°14' N. lat., 177°22' W. long.; and Kure Island 28°25' N. lat., 178°20' W. long. The protected species study zones encompasses waters within 50 nm of the geographical coordinates listed above.

Protected species zone means an area, designated under §665.26, measured from the center geographical positions of certain 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 are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

Receiving vessel permit means a permit required by §665.21(c) for a receiving vessel to transship or land Pacific pelagic management unit species taken by other vessels using longline gear.

Regional Administrator means Director, Pacific Islands Region, NMFS (see Table 1 of §600.502 for address).

Seamount groundfish means the following species:

Common name	Scientific name
Armorhead	<i>Pentaceros richardsoni</i> .
Alfonsin	<i>Beryx splendens</i> .
Raftfish	<i>Hyperoglyphe japonica</i> .

Selective gear means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

Shallow-set or Shallow-setting means the deployment of, or deploying, respectively, longline gear in a manner that does not meet the definition of deep-set or deep-setting as defined in this section.

Shallow-set certificate means an original paper certificate that is issued by NMFS and valid for one shallow-set of longline gear (more than one nautical mile of deployed longline gear is a complete set) for sets that start during the period of validity indicated on the certificate.

Special Agent-In-Charge (SAC) means the Special-Agent-In-Charge, NMFS, Pacific Islands Enforcement Division, or a designee of the SAC, located at 300 Ala Moana Blvd., Suite 7-118, Honolulu, Hawaii, 96850; telephone number (808) 541-2727.

Special permit means a permit issued to allow fishing for coral reef ecosystem management unit species in low-use MPAs or to fish for any PHCRT.

State of Hawaii Commercial Marine License means the license required by the State of Hawaii for anyone to take marine life for commercial purposes (also known as the commercial fishing license).

Transship means offloading or otherwise transferring management unit species or products thereof to a receiving vessel.

Trap means a box-like device used for catching and holding lobsters or fish.

U.S. harvested corals means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

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.

Western Pacific Fishery Management Area means those waters shoreward of the outer boundary of the EEZ around American Samoa, Guam, Hawaii, the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands.

Western Pacific general longline permit means the permit authorized under §665.21 to use a vessel shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, Johnston or Palmyra Atolls, Kingman Reef, or Wake, Jarvis, Baker or Howland Islands to fish for Pacific pelagic management unit species using longline gear or to land or to transship Pacific pelagic management unit species that were caught using longline gear.

[61 FR 34572, July 2, 1996]

Editorial Note: For Federal Register citations affecting §665.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 665.13 Permits and fees.

[Link to an amendment published at 73 FR 70602, Nov. 21, 2008.](#)

[Link to an amendment published at 73 FR 70604, Nov. 21, 2008.](#)

(a) *Applicability.* The requirements for permits for specific Western Pacific fisheries are set forth in subparts C, D, E, F, and G of this part.

(b) *Validity.* Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) *Application.* (1) A Western Pacific Federal Fisheries Permit Application Form may be obtained from the NMFS PIRO to apply for a permit or permits to operate in any of the fisheries regulated under subparts C, D, E, F, and G of this part. The completed application must be submitted to PIRO. In no case shall PIRO accept an application that is not on the Western Pacific Federal Fisheries Application Form.

(2) A minimum of 15 days after the day PIRO receives a complete application should be allowed for processing a permit application for fisheries under subparts C, D, E, and F of this part. A minimum of 60 days after the day PIRO receives a complete application should be allowed for processing a permit application for fisheries under subpart J of this part. If an incomplete or improperly completed application is filed, the applicant will be sent a letter of notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of the letter of notification of deficiency, the application will be considered abandoned.

(d) *Change in application information.* Any change in the permit application information or vessel documentation, submitted under paragraph (c) of this section, must be reported to PIRO in writing within 15 days of the change to avoid a delay in processing the permit application. A minimum of 10 days from the day the information is received by PIRO should be given for PIRO to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. §1858(g) or 15 CFR part 904, subpart D.

(e) *Issuance.* After receiving a complete application, the Regional Administrator will issue a permit to an applicant who is eligible under §§665.21, 665.36, 665.41, 665.61, 665.601, or 665.8, or 665.602 as appropriate.

(f) *Fees.* (1) PIRO will not charge a fee for a permit issued under subpart D or F of this part, for a Ho'omalulu Zone limited access permit, or for a Guam bottomfish permit issued under §665.61.

(2) PIRO will charge a non-refundable processing fee for each application (including transfers and renewals) for the following permits. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, for determining the administrative costs of each special product or service incurred in processing the permit. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude the issuance, transfer or renewal of any of these permits:

(i) Hawaii longline limited access permit;

(ii) Mau Zone limited access permit;

(iii) Coral reef ecosystem special permit;

(iv) American Samoa longline limited access permit; and

(v) Main Hawaiian Islands non-commercial bottomfish permit.

(g) *Expiration.* Permits issued under subparts C, D, E, F, and G of this part are valid for the period specified on the permit unless revoked, suspended, transferred, or modified.

(h) *Replacement.* Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) *Transfer.* An application for a permit transfer under §§665.21(h), 665.41(e), or 665.61(e), or for registration of a permit for use with a replacement vessel under §665.61(k), must be submitted to the PIRO as described in paragraph (c) of this section.

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

(k) *Display.* Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing management unit species shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(l) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

(m) *Permit appeals.* Procedures for appeals of permit and administrative actions are specified in the relevant subparts of this part.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22812, Apr. 28, 1999; 69 FR 8342, Feb. 24, 2004; 70 FR 29651, May 24, 2005; 71 FR 64476, Nov. 2, 2006; 73 FR 18458, Apr. 4, 2008]

§ 665.14 Reporting and recordkeeping.

[Link to an amendment published at 73 FR 70602, Nov. 21, 2008.](#)

(a) *Fishing record forms.* (1) *Applicability.* The operator of any fishing vessel subject to the requirements of §§665.21, 665.41, 665.61(a)(2), 665.61(a)(3), 665.61(a)(4), 665.81, or 665.602 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator. All information specified by the Regional Administrator must be recorded on paper or electronically

within 24 hours after the completion of each fishing day. The logbook information, reported on paper or electronically, for each day of the fishing trip must be signed and dated or otherwise authenticated by the vessel operator in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this paragraph (a).

(2) *Timeliness of submission.* (i) If fishing was authorized under a permit pursuant to §§665.21, 665.41, 665.61(a)(1), 665.61(a)(3), or 665.81 the vessel operator must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (iii) of this section.

(ii) If fishing was authorized under a permit pursuant to §665.61(a)(4) the vessel operator or vessel owner must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip.

(iii) If fishing was authorized under a PRIA bottomfish permit pursuant to §665.61(a)(2), PRIA pelagic troll and handline permit pursuant to §665.21(f), crustaceans fishing permit for the PRIA (Permit Area 4) pursuant to §665.41, or a precious corals fishing permit for Permit Area X-P-PI pursuant to §665.81, the original logbook form for each day of fishing within the PRIA EEZ waters must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(iv) If fishing was authorized under a permit pursuant to §665.602, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(b) *Transshipment logbooks.* Any person subject to the requirements of §665.21(c) or §665.602(a)(2) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 72 hours of each landing of Pacific pelagic management unit species. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 7 days of each landing of coral reef ecosystem MUS.

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of §665.41 must submit to the Regional Administrator, within 72 hours of offloading of crustaceans management unit species, an accurate and complete sales report on a form provided by the Regional Administrator. The form must be signed and dated by the fishing vessel operator.

(d) *Packing or weigh-out slips.* The operator of any fishing vessel subject to the requirements of §665.41 must attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing or weighout slips have not been provided in time by the buyer(s).

(e) *Modification of reporting and recordkeeping requirements.* The Regional Administrator may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing record forms, transshipment logbook, and sales report forms and timeliness by which the information is to be provided, including the submission of packing or weighout slips.

(f) *Availability of records for inspection*—(1) *Pacific pelagic management unit species.* Upon request, any fish dealer must immediately provide an authorized officer access for inspecting and copying all records of purchases, sales, or other transactions involving Pacific pelagic management unit species taken or handled by longline vessels that have permits issued under this subpart or that are otherwise subject to subpart C of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The weight, number, and size of each species of fish involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(2) *Crustaceans management unit species.* Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Administrator, to access, inspect, and copy all records relating to the harvest, sale, or transfer of crustacean management unit species taken by vessels that have permits issued under this subpart or that are otherwise subject to subpart D of this part. This requirement may be met by furnishing the information on a worksheet provided by the Regional Administrator. The information must include, but is not limited to:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The amount, number, and size of each management unit species involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(3) *Bottomfish and seamount groundfish management unit species.* Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and subpart E of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(4) *Coral reef ecosystem MUS.* Any person who has a special permit and who is required by state laws and regulations to maintain and submit records of catch and effort, landings and sales for coral reef ecosystem MUS by this subpart and subpart G of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer as defined in §600.10 of this chapter of this chapter

(g) *State reporting.* Any person who has a permit under §665.21, 665.61, or 665.601 and who is regulated by state laws and regulations to maintain and submit records of catch and effort, landings and sales for vessels regulated by subparts C, E and G of this part must maintain and submit those records in the exact manner required by state laws and regulations.

[61 FR 34572, July 2, 1996, as amended at 62 FR 27524, May 20, 1997; 67 FR 56501, Sept. 4, 2002; 69 FR 8343, Feb. 24, 2004; 71 FR 53607, Sept. 12, 2006; 71 FR 64476, Nov. 2, 2006; 72 FR 19125, Apr. 17, 2007; 73 FR 18458, Apr. 4, 2008]

§ 665.15 Prohibitions.

In addition to the prohibitions in §600.725 of this chapter, it is unlawful for any person to:

(a) Engage in fishing without a valid permit or facsimile of a valid permit on board the vessel and available for inspection by an authorized officer, when a permit is required under §665.13 or §665.17, unless the vessel was at sea when the permit was issued under §665.13, in which case the permit must be on board the vessel before its next trip.

(b) File false information on any application for a fishing permit under §665.13 or an EFP under §665.17.

(c) Fail to file reports in the exact manner required by any state law or regulation, as required in §665.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§665.14 and 665.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Administrator for inspection or copying, any records that must be made available in accordance with §665.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§665.16, 665.24, 665.47, and 665.605.

(g) Violate a term or condition of an EFP issued under §665.17.

(h) Fail to report any take of or interaction with protected species as required by §665.17(k).

(i) Fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS to make accommodations available for an observer under §§665.17, 665.28, 665.49, or 665.65.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Administrator under §665.28, §665.49, or §665.65, or under any provision in an EFP issued under §665.17.

(k) Fail to notify officials as required in §§665.23, 665.28, 665.43, 665.63, and 665.603.

(l) Fish for, take or retain within a no-take MPA, defined in §665.18, any bottomfish management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral, seamount groundfish or coral reef ecosystem MUS.

[61 FR 34572, July 2, 1996, as amended at 69 FR 8343, Feb. 24, 2004]

§ 665.16 Vessel identification.

(a) Each fishing vessel subject to this subpart, except those identified in paragraph (e) of this section, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this subpart and subparts C, D, E, and F of this part, in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing and receiving vessels of 65 ft (19.8 m) LOA or longer, and at least 10 inches (25.4 cm) in height for all other vessels, except vessels subject to Subpart F and 65 ft (19.8 m) LOA or longer must be marked in block Arabic numerals at least 14 inches (35.6 cm) in height. Marking must be legible and of a color that contrasts with the background.

(c) The vessel operator must ensure that the official number is clearly legible and in good repair.

(d) The vessel operator must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(e) The following fishing vessels are exempt from the vessel identification requirements in this section:

(1) A vessel registered for use under a Main Hawaiian Islands non-commercial bottomfish permit that is in compliance with State of Hawaii bottomfish vessel registration and marking requirements.

(2) [Reserved]

[61 FR 34572, July 2, 1996. Redesignated at 71 FR 17989, Apr. 10, 2006; 73 FR 18459, Apr. 4, 2008]

§ 665.17 Experimental fishing.

(a) *General.* The Regional Administrator may authorize, for limited purposes, the direct or incidental harvest of management unit species that would otherwise be prohibited by this subpart and subparts C, D, E, and F of this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Administrator in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Observers.* No experimental fishing for crustacean management unit species may be conducted unless an NMFS scientific observer is aboard the vessel.

(c) *Application.* An applicant for an EFP must submit to the Regional Administrator at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

(5) For each vessel to be covered by the EFP:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) *Incomplete applications.* The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(e) *Issuance.* (1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the Federal Register with a brief description of the proposal and will give interested persons an opportunity to comment. The Regional Administrator will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected state, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Administrator will consult with the Council and the Director of the affected state fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (e)(2) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP.

- (v) The applicant has failed to demonstrate a valid justification for the permit.
 - (vi) The activity proposed under the EFP would create a significant enforcement problem.
- (4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the Federal Register describing the experimental fishing to be conducted under the EFP. The Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:
- (i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.
 - (ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.
 - (iii) The times and places where experimental fishing may be conducted.
 - (iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.
 - (v) The condition that observers be carried aboard vessels operating under an EFP.
 - (vi) Data reporting requirements.
 - (vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.
- (f) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.
- (g) *Alteration.* Any EFP that has been altered, erased, or mutilated is invalid.
- (h) *Transfer.* EFPs issued under subparts B through F of this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.
- (i) *Inspection.* Any EFP issued under subparts B through F of this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.
- (j) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of subparts A through F of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904 subpart D. Other sanctions available under the statute will be applicable.
- (k) *Protected species.* Persons fishing under an EFP must report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Administrator within 3 days of arriving in port.

§ 665.18 Area restrictions.

- (a) Fishing is prohibited in all no-take MPAs designated in this section.
- (b) Anchoring by all fishing vessels over 50 ft (15.25 m) LOA is prohibited in the U.S. EEZ seaward of the Territory of Guam west of 144°30' E. long. except in the event of an emergency caused by ocean conditions or by a vessel malfunction that can be documented.
- (c) *MPAs* —(1) *No-take MPAs.* The following U.S. EEZ waters are no-take MPAs:
 - (i) Landward of the 50-fathom (fm) (91.5-m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153;
 - (ii) Landward of the 50-fm (91.5-m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.
- (2) *Low-use MPAs.* The following U.S. EEZ waters in the Western Pacific Region are low-use MPAs:
 - (i) All waters between the shoreline and the 50-fm (91.5-m) curve around Johnston Atoll, Palmyra Atoll, and Wake Island as depicted on National Ocean Survey Chart Numbers 83637, 83157 and 81664.
 - (ii) [Reserved]

[69 FR 8343, Feb. 24, 2004]

there has not been a large-scale directed fishery for this species in North Carolina. This prevents the meaningful quantification of current revenues that might be foregone as a result of the proposed action, as well as the identification and description of fishing entities that might desire to re-enter the fishery should the fishery reemerge in North Carolina in the future.

It should be emphasized that the proposed action would not directly affect any current fishing revenues or fishing practices because the medium mesh spiny dogfish gillnet fishery in North Carolina has not operated since the May 26, 2006, implementation of the BDTRP, nor in any substantive manner since 2000. Instead, the proposed continuation of the nighttime fishing prohibition would have an effect only if a directed spiny dogfish fishery reemerges in North Carolina because of changes in FMP actions. In that case, the proposed action would reduce potential medium mesh gillnet fishing opportunities by limiting soak times, and would limit the redevelopment and prosecution of a fishery that, prior to the FMPs and BDTRP, contributed a relatively minor share of fishing revenues to the fishery participants.

NMFS considered two alternatives for the proposed action. The first alternative, the status quo, would continue current restrictions until May 26, 2009, when the medium mesh gillnet prohibitions in North Carolina would expire. This alternative would allow increased soak times associated with the directed spiny dogfish fishery and associated revenues, if FMP actions allow for the reemergence of a directed fishery in North Carolina. However, this alternative would not prevent future incidental mortality and serious injury to dolphins from extended soak time of medium mesh commercial gillnet gear, and, therefore, would not meet the objectives of the BDTRP. The second alternative, the proposed action, would continue, without modification, current nighttime medium mesh gillnet restrictions in North Carolina state waters during the winter for an additional three years (until May 26, 2012). This alternative is a consensus recommendation of the BDTRT and would achieve the BDTRP's objectives, as mandated by the MMPA, by continuing to reduce serious injuries and mortalities of dolphins incidental to commercial gillnet fishing.

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List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 18, 2008.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*; § 220.32(f) also issued under 16 U.S.C. 1531 *et seq.*

2. In § 229.35 paragraphs (d)(4)(ii) and (d)(5)(i) are revised to read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

* * * * *

(d) * * *

(4) * * *

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

* * * * *

(5) * * *

(i) *Medium Mesh Gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

* * * * *

[FR Doc. E8–19580 Filed 8–21–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070719388–81094–02]

RIN 0648–AV29

Fisheries in the Western Pacific; Crustacean Fisheries; Deepwater Shrimp

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would designate deepwater shrimp of the genus *Heterocarpus* as management unit species (MUS), and require Federal permits and data reporting for deepwater shrimp fishing in Federal waters of the western Pacific. The proposed rule is intended to improve information on deepwater shrimp

fisheries and their ecosystem impacts, and to provide a basis for future management of the fisheries, if needed.

DATES: Comments on the proposed rule must be received by October 6, 2008.

ADDRESSES: Comments on this proposed rule, identified by 0648-AV29, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or

- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

Instructions: All comments received are a part of the public record and will generally be posted to

www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "NA" in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (FMP), and proposed FMP Amendment 13, which includes an environmental assessment (EA), are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William L. Robinson, and by e-mail to David_Rostker@omb.eop.gov or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR, 808-944-2272.

SUPPLEMENTARY INFORMATION: This Federal Register document is accessible at the Office of the Federal Register website: www.gpoaccess.gov/fr.

Crustacean fisheries in the western Pacific are federally-managed within the waters of the U.S. Exclusive Economic Zone (EEZ) around American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Hawaii, and the Pacific Remote Island Areas

(PRIA, comprising Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll). The EEZ around the CNMI and PRIA extends from the shoreline seaward to 200 nautical miles (nm), and the EEZ around the other islands extends from three to 200 nm offshore. Currently, the crustaceans FMP management unit species include the spiny lobsters *Panulirus marginatus* and *P. penicillatus*, slipper lobsters of the family Scyllaridae, and Kona (spanner) crab, *Ranina ranina*.

Eight species of the deepwater shrimp genus *Heterocarpus* have been reported throughout the tropical Pacific, generally at depths of 200 to 1,200 meters on the outer reef slopes that surround islands and deepwater banks. Species distribution tends to be stratified by depth with some overlap. The deepwater trap fisheries have primarily targeted *Heterocarpus ensifer* and *H. laevigatus*.

Western Pacific commercial trap fisheries for deepwater shrimp are intermittent. There have been sporadic operations in Hawaii since the 1960s, small-scale fisheries in Guam during the 1970s, and some activity in the CNMI during the mid-1990s. The fisheries have been unregulated, and there has been no comprehensive collection of information about the fisheries. Most of these fishing ventures have been short-lived, probably as a result of sometimes-frequent loss of traps, a shrimp product with a short shelf life and history of inconsistent quality, and the rapid localized depletion of deepwater shrimp stocks leading to low catch rates. Despite these hurdles, interest in deepwater shrimp fisheries continues.

Amendment 13 would designate deepwater shrimp of the genus *Heterocarpus* as management unit species under the FMP, and would require Federal permits and reporting for deepwater shrimp fishing in the U.S. EEZ. The proposed monitoring program (permits and logbooks) is intended to improve understanding of these fisheries and their impact on marine ecosystems. Although currently there are no resource concerns regarding western Pacific deepwater shrimp, the proposed designation of these shrimp as management unit species would provide a basis for management of the fisheries, if warranted in the future.

In addition to the proposed rule, Amendment 13 designates Essential Fish Habitat (EFH) for *Heterocarpus* spp. as required under the Magnuson-Stevens Act. To reduce the complexity and the number of EFH identifications required for each individual species and

life stages of the genus *Heterocarpus* in the western Pacific, EFH has been designated for the complete assemblage of adult and juvenile *Heterocarpus* spp. as the outer reef slopes between 300 and 700 meters surrounding every island and submerged banks in the western Pacific. The species complex designations includes all eight species of deepwater shrimp extant in the western Pacific (*Heterocarpus ensifer*, *H. laevigatus*, *H. sibogae*, *H. gibbosus*, *H. Lepidus*, *H. dorsalis*, *H. tricarinatus* and *H. longirostris*).

In addition to adding deepwater shrimp to the management unit, this proposed rule would reorganize some existing regulations relating to the Northwestern Hawaiian Islands (NWHI) lobster limited access permit program. These regulations, now in paragraphs § 665.41(a)(1), (a)(3), (a)(4), and 665.41(d), would be consolidated into paragraph § 665.41(d). The regulations would also clarify that the harvest of crustacean management unit species within the NWHI Marine National Monument is subject to the requirements of 50 CFR part 404.

To be considered, comments must be received by close of business on October 6, 2008, not postmarked or otherwise transmitted by that date.

In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on proposed FMP Amendment 13 through October 14, 2008 as stated in the Notice of Availability published on August 14, 2008 (50 CFR Part 665). Public comments on this proposed rule, if received by October 14, 2008, will also be considered in the approval/disapproval decision for Amendment 13. Comments received after that date will not be considered in the approval/disapproval decision for Amendment 13, but will be considered for this proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Crustaceans FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Amendment 13 includes an EA that discusses the impacts on the environment as a result of this rule. The purpose and need for the proposed action is to establish appropriate monitoring and management mechanisms for the domestic harvest of western Pacific deepwater shrimp. Based on the information in the EA, as

compared to the no-action alternative, the preferred alternative would have no adverse impacts to essential fish habitat or habitat areas of particular concern. None of the action alternatives would be expected to change the impacts of U.S. vessels on deepwater shrimp resources in the short term, but impacts on the resource base could increase with higher future effort, so increasing fishery managers' understanding of the status of the stocks and fishing mortality would be an important outcome of this action. By including deepwater shrimp as management unit species, the foundation would be established for implementing control measures, should they become necessary. None of the action alternatives is anticipated to have any significant adverse impacts on seabird, sea turtle, or marine mammal populations because the fishery has a relatively low level of participation, and there have been no observed or reported interactions with protected resources in the deepwater shrimp fishery. The preferred alternative would provide for the sustained participation of fishing communities by helping to ensure the long-term availability of western Pacific deepwater shrimp. The complete analysis of the alternatives is contained in Amendment 13, including an EA, and is not repeated here. Copies of the environmental analytical documents is available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to the proposed rule. This rule does not duplicate, overlap, or conflict with other Federal rules. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the NMFS Pacific Islands Regional Office has determined that this rule will not have a significant economic impact on a substantial number of small entities based on the pre-existing status of deepwater shrimp fisheries within the U.S. EEZ of the western Pacific. All vessels having the potential to participate in this fishery are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of \$ 4.0 million, independently owned and operated, and not dominant in the field). While fishing for deepwater shrimp has been sporadic over the

last several decades, in 1984, a total of 17 vessels reported catching approximately 159 tons of deepwater shrimp worth an estimated ex-vessel value of \$780,000. More recent information is not possible because confidentiality rules restrict the release of information from the small number of participants.

Alternative 1 (no action) would preclude Federal monitoring and management of known deepwater shrimp fisheries operating within the western Pacific. Alternative 2 would include deepwater shrimp as management unit species (MUS) under the Crustaceans FMP, enabling the Council and NMFS to develop management measures, as appropriate, for deepwater shrimp fisheries in the region. Alternative 3 would add deepwater shrimp to the MUS, as in Alternative 2, and would also require Federal permitting and reporting of harvest for vessels engaged in the deepwater shrimp fishery.

Alternatives 1 and 2 would yield no economic impact to small entities (vessels). However, Alternative 3 would have a slightly adverse economic impact resulting in a requirement to pay a vessel permit fee of approximately \$30. Applied on a 1984 dollar base, this represents only 0.06 percent of the average boat revenue for 1984. Alternative 3 represents the most adverse economic impact of the 3 alternatives. However, the fishery cannot be monitored and managed under the requirements of the Magnuson-Stevens Act, particularly National Standards 1 and 2, without accurate and reliable data on shrimp effort and production associated with required permitting, recordkeeping and reporting from the directed deepwater shrimp.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The preferred alternative would require the owners of U.S. vessels that fish for deepwater shrimp management unit species in the western Pacific to obtain Federal fishing permits, and the vessel operators would be required to complete and submit Federal catch reports. Permit eligibility would not be restricted in any way, and the permit would be renewable on an annual basis.

NMFS anticipates that initial permit applications would require 0.5 hours per applicant, with renewals requiring an additional 0.5 hours annually. It is estimated that NMFS may receive and process up to 10 permit applications each year. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at five (5) hours per year. The cost for individual Federal permits has not been determined, but would represent only

the administrative cost and is anticipated to be approximately \$30 per permit.

NMFS anticipates the time requirement to complete Federal catch reports to be approximately 10 minutes per vessel per fishing day. Assuming that 10 vessels fish during up to 100 days per year, the total collection-of-information burden estimate for fishing data reporting is estimated at 167 hours per year.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see **ADDRESSES**), and by e-mail to David_Rostker@omb.eop.gov or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: August 18, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

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

2. In § 665.12, revise the definition of "Crustaceans management unit species" to read as follows:

§ 665.12 Definitions.

* * * * *

Crustaceans management unit species means the following crustaceans:

Common Name	Scientific Name
Spiny lobsters	Panulirus marginatus
Slipper lobsters	P. penicillatus
Kona crab	family Scyllaridae
Deepwater shrimp	Ranina ranina
	Heterocarpus spp.

* * * * *

3. In § 665.13, revise paragraphs (f)(2)(i) through (f)(2)(v), and add a new paragraph (f)(2)(vi) to read as follows:

§ 665.13 Permits and fees.

* * * * *

- (f) Fees. * * *
- (2) * * *
- (i) Hawaii longline limited access permit.
- (ii) Mau Zone limited access permit.
- (iii) Coral reef ecosystem special permit.
- (iv) American Samoa longline limited access permit.
- (v) Main Hawaiian Islands non-commercial bottomfish permit.

(vi) Crustaceans permit.

* * * * *

4. In § 665.41, revise paragraphs (a) and (d) to read as follows:

§ 665.41 Permits.

(a) Applicability. (1) The owner of any vessel used to fish for lobster in Crustaceans Permit Area 1 must have a lobster limited access permit issued for such vessel.

(2) The owner of any vessel used to fish for lobster in Crustaceans Permit Areas 2, 3, or 4 must have a permit issued for that vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustaceans Permit Areas 1, 2, 3, or 4 must have a permit issued for that vessel.

(4) Harvest of crustacean management unit species within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

* * * * *

(d) Lobster Limited Access Permit Requirements.

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

(2) Only one permit will be assigned to any vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

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

* * * * *

5. In § 665.42, add a new paragraph (c) to read as follows.

§ 665.42 Prohibitions.

* * * * *

(c) In any Crustaceans Permit Area, it is unlawful for any person to:

(1) Fish for, take, or retain deepwater shrimp without a permit issued under § 665.41.

(2) Falsify or fail to make, keep, maintain, or submit Federal reports and records of harvests of deepwater shrimp as required under § 665.14.

[FR Doc. E8-19579 Filed 8-21-08; 8:45 am]

BILLING CODE 3510-22-S

including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around the Hawaiian Archipelago or American Samoa. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The permit holder or designated agent for a vessel registered for use under Hawaii longline limited access permits must also provide notification of the trip type (either deep-setting or shallow-setting).

(b) The permit holder, or designated agent, for any vessel registered for use under a Western Pacific squid jig fishing permit that is greater than 50 ft (15.4 m) in length overall, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in western Pacific EEZ waters. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder.

(c) For purposes of this section, the notice must be provided to the office or telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the permit holder or designated agent to be available between 8 a.m. and 5 p.m. (local time) on weekdays for NMFS to contact to arrange observer placement.

* * * * *

[FR Doc. E8-27775 Filed 11-20-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070719388-81445-03]

RIN 0648-AV29

Fisheries in the Western Pacific; Crustacean Fisheries; Deepwater Shrimp

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

ACTION: Final rule.

SUMMARY: This final rule implements Amendment 13 to the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (Crustacean FMP). The rule designates deepwater shrimp of the genus *Heterocarpus* as management unit species (MUS), and requires Federal permits and data reporting for deepwater shrimp fishing in Federal waters of the western Pacific. The final rule is intended to improve information on deepwater shrimp fisheries and their ecosystem impacts, and to provide a basis for future management of the fisheries, if needed.

DATES: This final rule is effective December 22, 2008, except for the amendments to §§ 665.13, 665.41, and 665.42, which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

ADDRESSES: The Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region and Amendment 13 are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700, and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR Sustainable Fisheries Division, 808-944-2272.

SUPPLEMENTARY INFORMATION: This final rule is accessible at the Office of the **Federal Register's** web site: www.gpoaccess.gov/fr/.

Crustacean fisheries in the western Pacific are Federally-managed within the waters of the U.S. Exclusive Economic Zone (EEZ) around American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Hawaii, and the Pacific Remote Island Areas (PRIA, comprising Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll). The EEZ around the CNMI and PRIA extends from the shoreline seaward to 200 nautical miles (nm), and the EEZ around the other islands extends from three to 200 nm offshore. Currently, the

crustaceans FMP management unit species include the spiny lobsters *Panulirus marginatus* and *P. penicillatus*, slipper lobsters of the family Scyllaridae, and Kona (spanner) crab, *Ranina ranina*.

Western Pacific commercial trap fisheries for deepwater shrimp are intermittent. There have been sporadic operations in Hawaii since the 1960s, small-scale fisheries in Guam during the 1970s, and some activity in the CNMI during the mid-1990s. The fisheries have been unregulated, and there has been no comprehensive collection of information about the fisheries. Most of these fishing ventures have been short-lived, probably as a result of sometimes-frequent loss of traps, a shrimp product with a short shelf life and history of inconsistent quality, and the rapid localized depletion of deepwater shrimp stocks leading to low catch rates. Despite these hurdles, interest in deepwater shrimp fisheries continues.

Amendment 13 designates deepwater shrimp of the genus *Heterocarpus* as management unit species under the FMP, and requires Federal permits and reporting for deepwater shrimp fishing in the U.S. EEZ. The species complex includes all eight species of deepwater shrimp in the western Pacific (*Heterocarpus ensifer*, *H. laevigatus*, *H. sibogae*, *H. gibbosus*, *H. lepidus*, *H. dorsalis*, *H. tricarinatus* and *H. longirostris*). The monitoring program (permits and logbooks) is intended to improve understanding of these fisheries and their impact on marine ecosystems. Although currently there are no resource concerns regarding western Pacific deepwater shrimp, the designation of these shrimp as management unit species provides a basis for management of the fisheries, if warranted in the future.

In addition to the final rule, Amendment 13 designates Essential Fish Habitat (EFH) for *Heterocarpus* spp., as required under the Magnuson-Stevens Act. EFH was designated for the complete assemblage of adult and juvenile *Heterocarpus* as the outer reef slopes between 300 and 700 meters surrounding all islands and submerged banks in EEZ waters of the western Pacific.

In addition to adding deepwater shrimp to the management unit, this final rule reorganizes some existing regulations relating to the Northwestern Hawaiian Islands (NWHI) lobster limited access permit program. These regulations, now in paragraphs § 665.41(a)(1), (a)(3), (a)(4), and 665.41(d), are consolidated into paragraph § 665.41(d). The regulations also clarify that the harvest of

crustacean management unit species within the NWHI Marine National Monument is subject to the requirements of 50 CFR part 404.

Additional background information on this final rule may be found in the preamble to the proposed rule published on August 22, 2008 (73 FR 49638), and is not repeated here.

Comments and Responses

On August 14, 2008, NMFS published a notice of availability and request for public comment on Amendment 13, including a Draft Environmental Assessment (73 FR 47577). The amendment comment period ended on October 14, 2008. On August 28, 2008, NMFS published a proposed rule (73 FR 50751) that would implement the management measures recommended by the Council in Amendment 13. The proposed rule comment period ended on October 6, 2008. NMFS received comments from the public, and responds as follows:

Comment 1: "Ghost fishing," or harvesting by traps that are lost and left on the fishing grounds, can be a problem when traps are lost, and modifications to trap design can lessen or eliminate the problem of ghost fishing by lost traps. Is trap design considered in this rule?

Response: The final rule does not specify trap design or fishing operations to reduce the potential for ghost fishing. The rule establishes deepwater shrimp as a management unit species, and implements permitting and data collection programs. These measures will ensure that quality information is collected about the fishery, including gear loss, and will establish a foundation for regulating the fishery, if needed in the future. If the information indicates that gear loss and resulting ghost fishing are significant problems, the Council and NMFS could consider measures to mitigate the problem, as necessary.

Comment 2: If these deepwater shrimp are found as deep as 800 m, and if the highest catches of deepwater shrimp in the NWHI were made at 500–800 m, why is Essential Fish Habitat (EFH) being established by Amendment 13 only to a lower depth limit of 700 m?

Response: Certain habitat is being designated as "essential" for the complete assemblage of adults and juveniles of all eight species; there may be individuals or species that are found and harvested shallower or deeper. As new information about these species and the fishery that targets them becomes available, the Council and NMFS may reconsider the EFH designations.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Classification

The Regional Administrator, Pacific Islands Region, NMFS, determined that Crustaceans FMP Amendment 13 is necessary for the conservation and management of the deepwater shrimp fishery, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the PRA. These requirements have not yet been approved by OMB, but such approval is expected in the near future. NMFS will publish a notice when these requirements are cleared by OMB and are, therefore, effective (see DATES).

NMFS anticipates that initial permit applications would require 0.5 hours per applicant, with renewals requiring an additional 0.5 hours annually. It is estimated that NMFS may receive and process up to 10 permit applications each year. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at five (5) hours per year. The cost for individual Federal permits has not been determined, but would represent only the administrative cost and is anticipated to be approximately \$30 per permit.

NMFS anticipates the time requirement to complete Federal catch reports to be approximately 10 minutes per vessel per fishing day. Assuming that 10 vessels fish up to 100 days per year, the total collection-of-information burden estimate for fishing data reporting is estimated at 167 hours per year. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson (see ADDRESSES), and by e-mail to

David_Rostker@omb.eop.gov or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

List of Subjects in 50 CFR Part 665 Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: November 17, 2008.

Samuel D. Rauch III,
Deputy Assistant Administrator For
Regulatory Programs, National Marine
Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.12, revise the definition of "Crustaceans management unit species" to read as follows:

§ 665.12 Definitions.

* * * * *

Crustaceans management unit species means the following crustaceans:

Common Name	Scientific Name
Spiny lobsters	<i>Panulirus marginatus</i>
	<i>P. penicillatus</i> .
Slipper lobsters	family <i>Scyllaridae</i> .
Kona crab	<i>Ranina ranina</i> .
Deepwater shrimp	<i>Heterocarpus</i> spp..

* * * * *

■ 3. In § 665.13, revise paragraphs (f)(2)(i) through (f)(2)(v), and add a new paragraph (f)(2)(vi) to read as follows:

§ 665.13 Permits and fees.

* * * * *

- (f) * * *
- (2) * * *
- (i) Hawaii longline limited access permit.
- (ii) Mau Zone limited access permit.
- (iii) Coral reef ecosystem special permit.
- (iv) American Samoa longline limited access permit.
- (v) Main Hawaiian Islands non-commercial bottomfish permit.
- (vi) Crustaceans permit.

* * * * *

■ 4. In § 665.41, revise paragraphs (a) and (d) to read as follows:

§ 665.41 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Crustaceans Permit Area 1 must have a lobster limited access permit issued for such vessel.

(2) The owner of any vessel used to fish for lobster in Crustaceans Permit Areas 2, 3, or 4 must have a permit issued for that vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustaceans Permit Areas 1, 2, 3, or 4 must have a permit issued for that vessel.

(4) Harvest of crustacean management unit species within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

* * * * *

(d) *Lobster Limited Access Permit Requirements.*

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

(2) Only one permit will be assigned to any vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

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

* * * * *

■ 5. In § 665.42, add a new paragraph (c) to read as follows.

§ 665.42 Prohibitions.

* * * * *

(c) In any Crustaceans Permit Area, it is unlawful for any person to:

(1) Fish for, take, or retain deepwater shrimp without a permit issued under § 665.41.

(2) Falsify or fail to make, keep, maintain, or submit Federal reports and records of harvests of deepwater shrimp as required under § 665.14.

[FR Doc. E8-27773 Filed 11-20-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671-8010-02]

RIN 0648-XL92

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the 2008 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 18, 2008, through 2400 hrs, A.l.t., December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., December 3, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-XL92," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: (907) 586-7557.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT:

Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for northern rockfish in the Western Regulatory Area of the GOA on October 6, 2008 (73 FR 58899, October 8, 2008).

NMFS has determined that approximately 258 mt of the 2008 TAC of northern rockfish in the Western Regulatory Area of the GOA remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2008 TAC of northern rockfish in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for northern rockfish in the Western Regulatory Area of the GOA. The opening is effective 1200 hrs, A.l.t., November 18, 2008, through 2400 hrs, A.l.t., December 31, 2008.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the northern rockfish fishery in the Western Regulatory Area of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 13, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C.

there has not been a large-scale directed fishery for this species in North Carolina. This prevents the meaningful quantification of current revenues that might be foregone as a result of the proposed action, as well as the identification and description of fishing entities that might desire to re-enter the fishery should the fishery reemerge in North Carolina in the future.

It should be emphasized that the proposed action would not directly affect any current fishing revenues or fishing practices because the medium mesh spiny dogfish gillnet fishery in North Carolina has not operated since the May 26, 2006, implementation of the BDTRP, nor in any substantive manner since 2000. Instead, the proposed continuation of the nighttime fishing prohibition would have an effect only if a directed spiny dogfish fishery reemerges in North Carolina because of changes in FMP actions. In that case, the proposed action would reduce potential medium mesh gillnet fishing opportunities by limiting soak times, and would limit the redevelopment and prosecution of a fishery that, prior to the FMPs and BDTRP, contributed a relatively minor share of fishing revenues to the fishery participants.

NMFS considered two alternatives for the proposed action. The first alternative, the status quo, would continue current restrictions until May 26, 2009, when the medium mesh gillnet prohibitions in North Carolina would expire. This alternative would allow increased soak times associated with the directed spiny dogfish fishery and associated revenues, if FMP actions allow for the reemergence of a directed fishery in North Carolina. However, this alternative would not prevent future incidental mortality and serious injury to dolphins from extended soak time of medium mesh commercial gillnet gear, and, therefore, would not meet the objectives of the BDTRP. The second alternative, the proposed action, would continue, without modification, current nighttime medium mesh gillnet restrictions in North Carolina state waters during the winter for an additional three years (until May 26, 2012). This alternative is a consensus recommendation of the BDTRT and would achieve the BDTRP's objectives, as mandated by the MMPA, by continuing to reduce serious injuries and mortalities of dolphins incidental to commercial gillnet fishing.

References

ASFMC. 2002. Interstate Fishery Management Plan for Spiny Dogfish. Fishery Management Report No. 40 of the Atlantic States Marine Fisheries

Commission. Prepared by the Spiny Dogfish Plan Development Team.

ASFMC. 2007a. Review of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Spiny Dogfish (*Squalus acanthias*) May 2006–April 2007 fishing year. Prepared by the Spiny Dogfish Plan Review Team, ASMFC.

ASMFC. 2007b. ASMFC Spiny Dogfish Board Sets 2008/2009 Fishing Year Quota at 8 Million Pounds. Atlantic States Marine Fisheries Commission Press Release, October 30, 2007.

Byrd, B.L., A.A. Hohn, F.H. Munden, G.N. Lovewell, and R.E. LoPiccolo. 2008. Effects of Commercial Fishing Regulations on Stranding Rates of Bottlenose Dolphins (*Tursiops truncatus*). Fish. Bull. 106:72–81.

Lovewell, G.N. and B.L. Byrd. 2007. Bottlenose Dolphins Recovered Inshore and on Ocean-Side Beaches of North Carolina from January 2005 to April 2007. Prepared by NMFS-SEFSC for the BDTRT. BDTRT document number 6–19–07q.

NCDMF. 2008. Overview of North Carolina Spiny Dogfish Regulations and Commercial Landings. North Carolina Department of Natural Resources, March 2008.

NMFS. Personal Communication. National Marine Fisheries Service, Fisheries Statistic Division, Silver Spring, MD.

NMFS. 2007. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2006. U.S. Department of Commerce. NOAA Technical Memorandum NMFS-NE–201.

NMFS. 2006. 43rd SAW Assessment Summary Report. U.S. Department of Commerce. Northeast Fishery Science Center Reference Document 06–14.

Rossmann, M. and D. Palka. 2004. A Review of Coastal Bottlenose Dolphin Bycatch Mortality Estimates in Relation to the Potential Effectiveness of the Proposed BDTRP. Prepared by NMFS-NEFSC for the BDTRT. BDTRT document number 1–13–05f.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 18, 2008.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*; § 220.32(f) also issued under 16 U.S.C. 1531 *et seq.*

2. In § 229.35 paragraphs (d)(4)(ii) and (d)(5)(i) are revised to read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

* * * * *

(d) * * *

(4) * * *

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

* * * * *

(5) * * *

(i) *Medium Mesh Gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

* * * * *

[FR Doc. E8–19580 Filed 8–21–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070719388–81094–02]

RIN 0648–AV29

Fisheries in the Western Pacific; Crustacean Fisheries; Deepwater Shrimp

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would designate deepwater shrimp of the genus *Heterocarpus* as management unit species (MUS), and require Federal permits and data reporting for deepwater shrimp fishing in Federal waters of the western Pacific. The proposed rule is intended to improve information on deepwater shrimp

fisheries and their ecosystem impacts, and to provide a basis for future management of the fisheries, if needed.

DATES: Comments on the proposed rule must be received by October 6, 2008.

ADDRESSES: Comments on this proposed rule, identified by 0648-AV29, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or

- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

Instructions: All comments received are a part of the public record and will generally be posted to

www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "NA" in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (FMP), and proposed FMP Amendment 13, which includes an environmental assessment (EA), are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William L. Robinson, and by e-mail to David_Rostker@omb.eop.gov or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR, 808-944-2272.

SUPPLEMENTARY INFORMATION: This Federal Register document is accessible at the Office of the Federal Register website: www.gpoaccess.gov/fr.

Crustacean fisheries in the western Pacific are federally-managed within the waters of the U.S. Exclusive Economic Zone (EEZ) around American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Hawaii, and the Pacific Remote Island Areas

(PRIA, comprising Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll). The EEZ around the CNMI and PRIA extends from the shoreline seaward to 200 nautical miles (nm), and the EEZ around the other islands extends from three to 200 nm offshore. Currently, the crustaceans FMP management unit species include the spiny lobsters *Panulirus marginatus* and *P. penicillatus*, slipper lobsters of the family Scyllaridae, and Kona (spanner) crab, *Ranina ranina*.

Eight species of the deepwater shrimp genus *Heterocarpus* have been reported throughout the tropical Pacific, generally at depths of 200 to 1,200 meters on the outer reef slopes that surround islands and deepwater banks. Species distribution tends to be stratified by depth with some overlap. The deepwater trap fisheries have primarily targeted *Heterocarpus ensifer* and *H. laevigatus*.

Western Pacific commercial trap fisheries for deepwater shrimp are intermittent. There have been sporadic operations in Hawaii since the 1960s, small-scale fisheries in Guam during the 1970s, and some activity in the CNMI during the mid-1990s. The fisheries have been unregulated, and there has been no comprehensive collection of information about the fisheries. Most of these fishing ventures have been short-lived, probably as a result of sometimes-frequent loss of traps, a shrimp product with a short shelf life and history of inconsistent quality, and the rapid localized depletion of deepwater shrimp stocks leading to low catch rates. Despite these hurdles, interest in deepwater shrimp fisheries continues.

Amendment 13 would designate deepwater shrimp of the genus *Heterocarpus* as management unit species under the FMP, and would require Federal permits and reporting for deepwater shrimp fishing in the U.S. EEZ. The proposed monitoring program (permits and logbooks) is intended to improve understanding of these fisheries and their impact on marine ecosystems. Although currently there are no resource concerns regarding western Pacific deepwater shrimp, the proposed designation of these shrimp as management unit species would provide a basis for management of the fisheries, if warranted in the future.

In addition to the proposed rule, Amendment 13 designates Essential Fish Habitat (EFH) for *Heterocarpus* spp. as required under the Magnuson-Stevens Act. To reduce the complexity and the number of EFH identifications required for each individual species and

life stages of the genus *Heterocarpus* in the western Pacific, EFH has been designated for the complete assemblage of adult and juvenile *Heterocarpus* spp. as the outer reef slopes between 300 and 700 meters surrounding every island and submerged banks in the western Pacific. The species complex designations includes all eight species of deepwater shrimp extant in the western Pacific (*Heterocarpus ensifer*, *H. laevigatus*, *H. sibogae*, *H. gibbosus*, *H. Lepidus*, *H. dorsalis*, *H. tricarinatus* and *H. longirostris*).

In addition to adding deepwater shrimp to the management unit, this proposed rule would reorganize some existing regulations relating to the Northwestern Hawaiian Islands (NWHI) lobster limited access permit program. These regulations, now in paragraphs § 665.41(a)(1), (a)(3), (a)(4), and 665.41(d), would be consolidated into paragraph § 665.41(d). The regulations would also clarify that the harvest of crustacean management unit species within the NWHI Marine National Monument is subject to the requirements of 50 CFR part 404.

To be considered, comments must be received by close of business on October 6, 2008, not postmarked or otherwise transmitted by that date.

In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on proposed FMP Amendment 13 through October 14, 2008 as stated in the Notice of Availability published on August 14, 2008 (50 CFR Part 665). Public comments on this proposed rule, if received by October 14, 2008, will also be considered in the approval/disapproval decision for Amendment 13. Comments received after that date will not be considered in the approval/disapproval decision for Amendment 13, but will be considered for this proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Crustaceans FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Amendment 13 includes an EA that discusses the impacts on the environment as a result of this rule. The purpose and need for the proposed action is to establish appropriate monitoring and management mechanisms for the domestic harvest of western Pacific deepwater shrimp. Based on the information in the EA, as

compared to the no-action alternative, the preferred alternative would have no adverse impacts to essential fish habitat or habitat areas of particular concern. None of the action alternatives would be expected to change the impacts of U.S. vessels on deepwater shrimp resources in the short term, but impacts on the resource base could increase with higher future effort, so increasing fishery managers' understanding of the status of the stocks and fishing mortality would be an important outcome of this action. By including deepwater shrimp as management unit species, the foundation would be established for implementing control measures, should they become necessary. None of the action alternatives is anticipated to have any significant adverse impacts on seabird, sea turtle, or marine mammal populations because the fishery has a relatively low level of participation, and there have been no observed or reported interactions with protected resources in the deepwater shrimp fishery. The preferred alternative would provide for the sustained participation of fishing communities by helping to ensure the long-term availability of western Pacific deepwater shrimp. The complete analysis of the alternatives is contained in Amendment 13, including an EA, and is not repeated here. Copies of the environmental analytical documents is available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to the proposed rule. This rule does not duplicate, overlap, or conflict with other Federal rules. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the NMFS Pacific Islands Regional Office has determined that this rule will not have a significant economic impact on a substantial number of small entities based on the pre-existing status of deepwater shrimp fisheries within the U.S. EEZ of the western Pacific. All vessels having the potential to participate in this fishery are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of \$ 4.0 million, independently owned and operated, and not dominant in the field). While fishing for deepwater shrimp has been sporadic over the

last several decades, in 1984, a total of 17 vessels reported catching approximately 159 tons of deepwater shrimp worth an estimated ex-vessel value of \$780,000. More recent information is not possible because confidentiality rules restrict the release of information from the small number of participants.

Alternative 1 (no action) would preclude Federal monitoring and management of known deepwater shrimp fisheries operating within the western Pacific. Alternative 2 would include deepwater shrimp as management unit species (MUS) under the Crustaceans FMP, enabling the Council and NMFS to develop management measures, as appropriate, for deepwater shrimp fisheries in the region. Alternative 3 would add deepwater shrimp to the MUS, as in Alternative 2, and would also require Federal permitting and reporting of harvest for vessels engaged in the deepwater shrimp fishery.

Alternatives 1 and 2 would yield no economic impact to small entities (vessels). However, Alternative 3 would have a slightly adverse economic impact resulting in a requirement to pay a vessel permit fee of approximately \$30. Applied on a 1984 dollar base, this represents only 0.06 percent of the average boat revenue for 1984. Alternative 3 represents the most adverse economic impact of the 3 alternatives. However, the fishery cannot be monitored and managed under the requirements of the Magnuson-Stevens Act, particularly National Standards 1 and 2, without accurate and reliable data on shrimp effort and production associated with required permitting, recordkeeping and reporting from the directed deepwater shrimp.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The preferred alternative would require the owners of U.S. vessels that fish for deepwater shrimp management unit species in the western Pacific to obtain Federal fishing permits, and the vessel operators would be required to complete and submit Federal catch reports. Permit eligibility would not be restricted in any way, and the permit would be renewable on an annual basis.

NMFS anticipates that initial permit applications would require 0.5 hours per applicant, with renewals requiring an additional 0.5 hours annually. It is estimated that NMFS may receive and process up to 10 permit applications each year. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at five (5) hours per year. The cost for individual Federal permits has not been determined, but would represent only

the administrative cost and is anticipated to be approximately \$30 per permit.

NMFS anticipates the time requirement to complete Federal catch reports to be approximately 10 minutes per vessel per fishing day. Assuming that 10 vessels fish during up to 100 days per year, the total collection-of-information burden estimate for fishing data reporting is estimated at 167 hours per year.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see **ADDRESSES**), and by e-mail to David_Rostker@omb.eop.gov or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: August 18, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

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

2. In § 665.12, revise the definition of "Crustaceans management unit species" to read as follows:

§ 665.12 Definitions.

* * * * *

Crustaceans management unit species means the following crustaceans:

Common Name	Scientific Name
Spiny lobsters	Panulirus marginatus
Slipper lobsters	P. penicillatus
Kona crab	family Scyllaridae
Deepwater shrimp	Ranina ranina
	Heterocarpus spp.

* * * * *

3. In § 665.13, revise paragraphs (f)(2)(i) through (f)(2)(v), and add a new paragraph (f)(2)(vi) to read as follows:

§ 665.13 Permits and fees.

* * * * *

- (f) Fees. * * *
- (2) * * *
- (i) Hawaii longline limited access permit.
- (ii) Mau Zone limited access permit.
- (iii) Coral reef ecosystem special permit.
- (iv) American Samoa longline limited access permit.
- (v) Main Hawaiian Islands non-commercial bottomfish permit.

(vi) Crustaceans permit.

* * * * *

4. In § 665.41, revise paragraphs (a) and (d) to read as follows:

§ 665.41 Permits.

(a) Applicability. (1) The owner of any vessel used to fish for lobster in Crustaceans Permit Area 1 must have a lobster limited access permit issued for such vessel.

(2) The owner of any vessel used to fish for lobster in Crustaceans Permit Areas 2, 3, or 4 must have a permit issued for that vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustaceans Permit Areas 1, 2, 3, or 4 must have a permit issued for that vessel.

(4) Harvest of crustacean management unit species within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

* * * * *

(d) Lobster Limited Access Permit Requirements.

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

(2) Only one permit will be assigned to any vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

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

* * * * *

5. In § 665.42, add a new paragraph (c) to read as follows.

§ 665.42 Prohibitions.

* * * * *

(c) In any Crustaceans Permit Area, it is unlawful for any person to:

(1) Fish for, take, or retain deepwater shrimp without a permit issued under § 665.41.

(2) Falsify or fail to make, keep, maintain, or submit Federal reports and records of harvests of deepwater shrimp as required under § 665.14.

[FR Doc. E8-19579 Filed 8-21-08; 8:45 am]

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