

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 03/09/2009

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 03/09/2009

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200903-0648-002
AGENCY ICR TRACKING NUMBER:
TITLE: Permitting, Vessel Identification And Vessel Monitoring System Requirements For The Commercial Bottomfish Fishery In The Commonwealth Of The Northern Mariana Islands
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0584
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: 03/31/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	137	84	135
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	137	84	135
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
Permit applications	NA	Federal Fisheries Permit Application Form - Northern Mariana Islands Bottomfish Permit	
Vessel identification			50 CFR 665.16
Vessel Monitoring System Installation and Maintenance			50 CFR 665.19

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
PERMITTING, VESSEL IDENTIFICATION AND VESSEL MONITORING SYSTEM
REQUIREMENTS FOR THE COMMERCIAL BOTTOMFISH FISHERY IN THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
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) and the U.S. 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 Council prepared, and the Secretary approved and implemented through regulations at 50 CFR Part 665, an amendment to the Fishery Management Plan (FMP) for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. The regulations require the owners of commercial fishing vessels in the bottomfish fishery in the Commonwealth of the Northern Mariana Islands (CNMI) to register their vessels to a valid Federal bottomfish permit issued by the National Marine Fisheries Service (NMFS). This collection of information is needed for permit issuance, to identify actual or potential participants in the fishery, determine qualifications for permits, and to help measure the impacts of management controls on the participants in the fishery. The permit program is also an effective tool in the enforcement of fishery regulations and serves as a link between NMFS and fishermen.

The Federal vessel identification requirements were created for large commercial fishing vessels to assist in aerial and at-sea enforcement of fishing regulations. The typical CNMI-based commercial bottomfish vessel, however, is not large enough to have the superstructure or deckhouse to support the Federal vessel identification markings. The proposed rule would exempt CNMI-based commercial bottomfish vessels from the Federal vessel identification requirements, if the vessels are less than 40 ft (12.2 m) long and in compliance with vessel registration and marking requirements of the CNMI. Commercial CNMI bottomfish vessels over 40 ft (12.2 m) would be required to be marked in compliance with Federal vessel identification requirements.

Shipboard vessel monitoring system (VMS) units would be required on vessels over 40 ft (12.2 m). The VMS is an automated, satellite-based system that assists the NMFS Office for Law Enforcement (OLE) and the USCG in monitoring compliance with CNMI closed areas in a reliable and cost-effective manner.

This is a new request related to Proposed Rule, RIN: 0648-AV28, published on September 8, 2008, possibly to be merged in the future with OMB Control No. 0648-0490, Pacific Islands

Region Permit Family of Forms. A related request for reporting and recordkeeping will be submitted as a revision to OMB Control No. 0648-0214, Pacific Islands Region Logbook Family of Forms.

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, the USCG, and the Council. Private information will not be disseminated to the public, and will be reported only in non-confidential or aggregate form.

Vessel Identification and Vessel Monitoring System (VMS)

On a broad level, the VMS reports provide authorized users (primarily OLE and USCG) with the near real-time vessel location and activity information. These reports are used to facilitate enforcement of the area closures in the fishery, and may also be used to check the accuracy of vessel position information reported by the vessel operator in the daily fishing logbooks required by regulations. The information collected will not be disseminated to the public inasmuch as it is primarily for use internally by authorized users (including personnel from OLE, NMFS, USCG, and others per National Marine Fisheries Service Policy Directive Pd 06-101 June 17, 2006, VMS Data Access and Dissemination Policy, and NOA 216-00, Protection of Confidential Fisheries Statistics).

The information will not be disseminated to the public except in non-confidential or aggregate form in summary and analytical reports. Any information that might be used to support publicly disseminated information would first be aggregated and/or summarized to maintain the confidentiality of the information pertaining to the individual vessels.

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 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

At this time, the information will be collected on paper forms and the collection of information does not require any knowledge of automated, electronic, mechanical or other forms of information technology. Once this information collection request is approved, the permit application forms will be posted at http://www.fpir.noaa.gov/SFD/SFD_permits_11.html for downloading, filling and printing.

There is the possibility of allowing participants to submit their permit applications online to NMFS, but this would only be an option. A web-based national fisheries permit system is currently under development.

Vessel Identification

Vessel identification is done manually.

Vessel Monitoring System (VMS)

The VMS is an automated, satellite-based system that assists OLE and the USCG in monitoring compliance with closed areas in a reliable and cost-effective manner. Electronic VMS shipboard equipment installed permanently on board a vessel provides information about the vessel's position and activity. That information is communicated between the shipboard VMS unit and the monitoring agency's fishery monitoring center, where the identity and location of the vessels are shown on a map display, comparing vessel positions with features of interest, such as closed area boundaries.

4. Describe efforts to identify duplication.

Permits

There is no similar CNMI permit requirement for the commercial CNMI bottomfish fishery.

Vessel Identification

The information is not duplicative; it is a unique requirement for vessels over 40 feet (12.2 m) participating in the commercial CNMI bottomfish fishery.

Vessel Monitoring System (VMS)

There is a similar comparable program for collection of real-time location information in the Western Pacific pelagic longline fishery. Requiring vessel operators to report vessel locations at sea would have been much more costly and difficult, and would have imposed a direct reporting burden on the vessel operator. The VMS unit is passive and automatic, requiring no reporting time of the vessel.

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

Federal CNMI bottomfish permit applications would be available online and from Pacific Islands Regional Office (PIRO) to reduce the burden of time spent applying or ordering by mail.

Applications may be downloaded, filled, printed, and then mailed to NMFS. Permits will be issued by NMFS and delivered via U.S. mail.

VMS units will be purchased, installed, and maintained by NMFS. Appointments for installation and maintenance inspections will be arranged with the vessel owner and operator to minimize time burden and business disruption by these activities. Also, at time of installation and maintenance, NMFS will train the vessel owner and operator regarding VMS requirements to minimize burden of learning and allow efficient use of vessel equipment that may be attached to the VMS unit.

Vessel identification instructions provided by NMFS are straightforward and the task is 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 would be unable to properly evaluate activity, participation, and reporting compliance in the commercial CNMI bottomfish fishery. It would 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 would 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.

Vessel Identification

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

Vessel Monitoring System (VMS)

If VMS is not operational, OLE, USCG, and cooperating states would be tasked with monitoring CNMI fishing closed areas via air and surface patrols.

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-AV28 (73 FR 51992), published on September 8, 2008, solicited public comments on this submission. No comments of a substantive nature relating to this collection were received.

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, as 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, logbooks and sales reports. Respondents are informed of these protections on the forms.

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 and process up to 125 permit applications for Federal CNMI bottomfish permits each year. Applicants are expected to spend 30 minutes completing the application, and renewing a permit would require 30 minutes annually. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at 62.5 (63) hours per year.

Vessel Identification

For the medium and large vessel identification requirements, the burden is estimated at 45 minutes to paint each vessel (15 minutes for each of three locations on the vessel where marking is required). Assuming 6 medium and large bottomfish vessels are active, the total collection-of-information burden estimate is 4.5 (5) hours.

Total hours: 6 vessels x 45 min. per vessel = 5 hours.

Vessel Monitoring System (VMS)

For the medium and large vessel VMS requirements, the estimated time per response is four hours to install a VMS unit, and two hours per year to repair and maintain a VMS unit.

Assuming 6 medium and large bottomfish vessels are active, the total collection-of-information burden estimate for compliance with VMS requirements is 24 hours the first year and 12 hours annually after that. Averaged over three years, the annualized burden would be 16 hours.

Summary of Response and Hours

The total number of responses stated above and hours needed is summarized below.

Total number of responses:

125 applications + 6 vessel markings + VMS installation/maintenance for 6 vessels = 137.

Total number of hours: 63 + 5 + 16 = 84.

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 #12 above).

Permits

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 \$75 per year, or \$0.60 per response.

Vessel Identification

For the medium and large vessel identification requirements, the burden is estimated at about \$10 for paint and supplies to paint each vessel. Assuming six medium and large bottomfish vessels are active, the total collection-of-information burden estimate is \$60.

Vessel Monitoring System (VMS)

There is no cost to the respondent.

Total costs: \$75 + \$60 = \$135.

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

Permits

The estimated annual cost to the Federal government to administer this collection of information is up to \$1,250. This includes the cost to process permit applications and issue permits at \$1,250 per year (125 permits x 30 min/permit x \$20/hr).

Vessel Identification

No cost.

Vessel Monitoring System (VMS)

The NMFS would pay for the shipboard VMS equipment, installation, maintenance, and official communications. The estimated cost of the VMS for a projected six vessels over 40 ft would be \$48K for the purchase and installation of VMS units on these vessels, and approximately \$15K/yr for communications and maintenance costs. An additional one-time cost of \$10K is anticipated to design and implement the new closed areas in the VMS geographical information system (GIS) platform, and to program the VMS units for proper reporting. The VMS figures are approximate estimates at this time and reflect the geographical and logistical scenario presented in terms of cost per installation.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

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

NORTHERN MARIANA ISLANDS BOTTOMFISH PERMIT

Bottomfish and Seamount Groundfish 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.

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

*VESSEL REGISTERED LENGTH: _____ (feet) RADIO CALL SIGN: _____

*VESSEL OWNER: _____ Taxpayer Identification Number
First, Middle, & Last Name or Business Name (*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. The primary purpose for requesting the TIN is for the collection and reporting on any delinquent amounts arising of such person's relationship with the government pursuant to the Debt Collection Improvement Act of 1996 (Public Law 104-134). Personal information is confidential and protected under the Privacy Act (5 U.S.C. 552a). Business information may be disclosed to the public.

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

*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 CNMI bottomfish 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 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;

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(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;

16 U.S.C. 1853
MSA § 303

(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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MSA § 303

(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.

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(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.

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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.

16 U.S.C. 1881a-1881b
MSA §§ 402-403

(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 E—Bottomfish and Seamount Groundfish Fisheries**

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

§ 665.61 Permits.

- (a) *Applicability.* (1) *Northwestern Hawaiian Islands (NWHI).* The owner of any vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Northwestern Hawaiian Islands subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. The PIRO will not register a single vessel for use with the Ho 'omalulu Zone permit and a Mau Zone permit at the same time. Mau Zone permits issued before June 14, 1999, become invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (b)(3) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho 'omalulu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.
- (2) *Pacific Remote Island Areas (PRIA).* The owner of any vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Pacific Remote Island Areas subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.
- (3) *Guam large vessel.* The owner of any large vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.
- (4) *Main Hawaiian Islands non-commercial.* The owner of a vessel that is used for and any person who participates in non-commercial, vessel-based fishing, landing, or transshipment of bottomfish management unit species in the Main Hawaiian Islands Management Subarea is required to obtain a Main Hawaiian Islands non-commercial bottomfish permit or a State of Hawaii Commercial Marine License. If one or more persons on a vessel-based bottomfish fishing trip holds a Main Hawaiian Islands non-commercial permit, then the entire trip is considered non-commercial, and not commercial. However, if any commercial fishing occurs during or as a result of a vessel-based fishing trip, then the fishing trip is considered commercial, and not non-commercial. Charter boat customers are not subject to the requirements of the section.
- (b) *Submission.* (1) An application for a permit required under this section must be submitted to the PIRO as described in §665.13. (2) *Ho 'omalulu Zone limited access permit.* In addition to an application under §665.13(c), each applicant for a Ho 'omalulu Zone permit must also submit a supplementary information sheet provided by the PIRO, which must be signed by the vessel owner or a designee and include the following information:
- The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;
 - A copy of landings receipts or other documentation, with a certification from a state or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; and
 - If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentages of ownership of the partnership or corporation.
- (3) *Mau Zone limited access permit.* The PIRO will not accept applications for a new Mau Zone permit after June 14, 1999. In addition to an application under §665.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by the PIRO, which must be signed by the vessel owner or a designee and include the following information:
- The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;
 - Copy of State of Hawaii catch report(s) to demonstrate that the permitted vessel had made qualifying landings of bottomfish from the Mau Zone; and
 - If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentage of ownership of the partnership or corporation.
- (c) *Sale or transfer of Ho 'omalulu limited access permits to new vessel owners.* (1) A Ho 'omalulu zone permit may not be sold or otherwise transferred to a new owner.
- (2) A Ho 'omalulu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Administrator.
- (d) *Transfer of Ho 'omalulu Zone limited access permits to replacement vessels.* (1) Upon application by the owner of a permitted vessel, the Regional Administrator will transfer that owner's permit to a replacement vessel owned by that owner, provided that the replacement vessel does not exceed 60 ft (18.3 m) in length. The replacement vessel must be put into service no later than 12 months after the owner applies for the transfer, or the transfer shall be void.
- (2) An owner of a permitted vessel may apply to the Regional Administrator for transfer of that owner's permit to a replacement vessel greater than 60 ft (18.3 m) in length. The Regional Administrator may transfer the permit upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, or has catching power that does not exceed that of the original vessel, and that the transfer is not inconsistent with the objectives of the program. The Regional Administrator shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.
- (e) *Ho 'omalulu Zone limited access permit renewal.* (1) A qualifying landing for Ho 'omalulu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of bottomfish management unit species from the Ho 'omalulu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho 'omalulu Zone, of which at least 50 percent by weight was bottomfish management unit species. A permit is eligible for renewal for the next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.
- (2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Administrator for waiver of the landing requirement. If the Regional Administrator finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Administrator may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.
- (f) *Issuance of new Ho 'omalulu Zone limited access permits.* The Regional Administrator may issue new Ho 'omalulu Zone limited access permits under §665.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho 'omalulu Zone are able to support additional fishing effort.
- (g) *Eligibility for new Ho 'omalulu Zone limited access permits.* When the Regional Administrator has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:
- (1) *Point system.* (i) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more of any of the following types of landings in the NWHI:
- Any amount of bottomfish management unit species, regardless of weight, if made on or before
 - If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentages of ownership of the partnership or corporation.
- (3) *Mau Zone limited access permit.* The PIRO will not accept applications for a new Mau Zone permit after June 14, 1999. In addition to an application under §665.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by the PIRO, which must be signed by the vessel owner or a designee and include the following information:
- The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;
 - Copy of State of Hawaii catch report(s) to demonstrate that the permitted vessel had made qualifying landings of bottomfish from the Mau Zone; and
 - If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentage of ownership of the partnership or corporation.
- (h) *Sale or transfer of Ho 'omalulu limited access permits to new vessel owners.* (1) A Ho 'omalulu zone permit may not be sold or otherwise transferred to a new owner.
- (2) A Ho 'omalulu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Administrator.
- (i) *Transfer of Ho 'omalulu Zone limited access permits to replacement vessels.* (1) Upon application by the owner of a permitted vessel, the Regional Administrator will transfer that owner's permit to a replacement vessel owned by that owner, provided that the replacement vessel does not exceed 60 ft (18.3 m) in length. The replacement vessel must be put into service no later than 12 months after the owner applies for the transfer, or the transfer shall be void.
- (2) An owner of a permitted vessel may apply to the Regional Administrator for transfer of that owner's permit to a replacement vessel greater than 60 ft (18.3 m) in length. The Regional Administrator may transfer the permit upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, or has catching power that does not exceed that of the original vessel, and that the transfer is not inconsistent with the objectives of the program. The Regional Administrator shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.
- (j) *Ho 'omalulu Zone limited access permit renewal.* (1) A qualifying landing for Ho 'omalulu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of bottomfish management unit species from the Ho 'omalulu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho 'omalulu Zone, of which at least 50 percent by weight was bottomfish management unit species. A permit is eligible for renewal for the next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.
- (2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Administrator for waiver of the landing requirement. If the Regional Administrator finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Administrator may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.
- (k) *Issuance of new Ho 'omalulu Zone limited access permits.* The Regional Administrator may issue new Ho 'omalulu Zone limited access permits under §665.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho 'omalulu Zone are able to support additional fishing effort.
- (l) *Eligibility for new Ho 'omalulu Zone limited access permits.* When the Regional Administrator has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) *Point system.* (i) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more of any of the following types of landings in the NWHI:

(A) Any amount of bottomfish management unit species, regardless of weight, if made on or before August 7, 1985;

(B) At least 2,500 lb (1,134 kg) of bottomfish management unit species, if made after August 7, 1985; or

(C) At least 2,500 lb (1,134 kg) of any fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands.

(iii) For any one year, points will be assigned under either paragraph (g)(1)(i) or (g)(1)(ii) of this section, but not under both paragraphs.

(iv) Before the Regional Administrator issues an Ho'omalau zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) *Restrictions.* An applicant must own at least a 25-percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) *Order of issuance.* New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Administrator through a lottery.

(4) *Notification.* The Regional Administrator shall place a notice in the Federal Register and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) *Eligibility for new Mau Zone limited access permits.* (1) The PIRO will issue an initial Mau Zone permit to a vessel owner who qualifies for at least three points under the following point system:

(i) An owner who held a Mau Zone permit on or before December 17, 1991, and whose permitted vessel made at least one qualifying landing of bottomfish management unit species on or before December 17, 1991, shall be assigned 1.5 points.

(ii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1991, shall be assigned 0.5 point.

(iii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1992, shall be assigned 1.0 point.

(iv) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1993, shall be assigned 1.5 points.

(v) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1994, shall be assigned 2.0 points.

(vi) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1995, shall be assigned 2.5 points.

(vii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1996, shall be assigned 3.0 points.

(viii) Before the PIRO issues a Mau Zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) For purposes of this paragraph §665.61(h), a "qualifying landing" means any amount of bottomfish management unit species lawfully harvested from the Mau Zone and offloaded for sale. No points shall be assigned to an owner for any qualifying landings reported to the State of Hawaii more than 1 year after the landing.

(3) More than one Mau Zone permit may be issued to an owner of two or more vessels, provided each of the owner's vessels for which a permit will be registered for use has made the required qualifying

landings for the owner to be assigned at least three eligibility points.

(4) A Mau Zone permit holder who does not own a vessel at the time initial permits are issued must register the permit for use with a vessel owned by the permit holder within 12 months from the date the permit was issued. In the interim, the permit holder may register the permit for use with a leased or chartered vessel. If within 12 months of initial permit issuance, the permit holder fails to apply to the PIRO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(5) For each of paragraphs (h)(1)(i) through (h)(1)(viii) of this section, the PIRO shall assign points based on the landings of one permitted vessel to only one owner if the vessel did not have multiple owners during the time frame covered by the subordinate paragraphs. If a vessel had multiple owners during a time frame covered by any of paragraphs (h)(1)(i) through (h)(1)(viii) of this section (including joint owners, partners, or shareholders of a corporate owner), the PIRO will assign the points for that subordinate paragraph to a single owner if only one owner submits an application with respect to the landings of that vessel during that time frame. If multiple owners submit separate applications with respect to the same landings of the same vessel during the same time frame, then the PIRO shall:

(i) Adhere to any written agreement between the applicants with respect to who among them shall be assigned the aggregate point(s) generated by landings during such time frame(s), or

(ii) If there is no agreement:

(A) Shall issue the applicants a joint permit provided the vessel's landings during such time frames generated at least three points, or

(B) In the event the vessel's landings during such time frame(s) generated less than three points, shall not assign any points generated by the vessel's landings during such time frame(s).

(i) *Ownership requirements and registration of Mau Zone limited access permits for use with other vessels.* (1) A Mau Zone permit may be held by an individual, partnership, or corporation. No more than 49 percent of the underlying ownership interest in a Mau Zone permit may be sold, leased, chartered, or otherwise transferred to another person or entity. If more than 49 percent of the underlying ownership of the permit passes to persons or entities other than those listed in the original permit application supplemental information sheet, then the permit expires and must be surrendered to the PIRO.

(2) A Mau Zone permit holder may apply under §665.13 to the PIRO to register the permit for use with another vessel if that vessel is owned by the permit holder, and is no longer than 60 ft (18.3 m).

(3) If a Mau Zone permit holder sells the vessel, for which the permit is registered for use, the permit holder must within 12 months of the date of sale apply to the PIRO to register the permit for use with a vessel owned by the permit holder. If the permit holder has not applied to register a replacement vessel within 12 months, then the permit expires.

(4) If a permitted vessel owned by the permit holder is sold or becomes unseaworthy, the Mau Zone permit with which the vessel was registered may be registered for use with a leased or chartered vessel for a period not to exceed 12 months from the date of registration of the leased or chartered vessel. If by the end of that 12-month period the permit holder fails to apply to the PIRO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(j) *Mau Zone limited access permit renewal.* (1) A Mau Zone permit will be eligible for renewal if the vessel for which the permit is registered for use made at least five separate fishing trips with landings of at least 500 lb (227 kg) of bottomfish management unit species per trip during the calendar year. Only one landing of bottomfish management unit species per fishing trip to the Mau Zone will be counted toward the landing requirement.

(2) If the vessel for which the permit is registered for use fails to meet the landing requirement of paragraph (j)(1) of this section, the owner may apply to the Regional Administrator for a waiver of the landing requirement. Grounds for a waiver are limited to captain incapacitation, vessel breakdowns, and the loss of the vessel at sea if the event prevented the vessel from meeting the landing requirement. Unprofitability is not sufficient for waiver of the landing requirement.

(3) Failure of the permit holder to register a vessel for use under the permit does not exempt a permit holder from the requirements specified in this paragraph.

(k) *Appeals of permit actions.* (1) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, or revocation of his or her permit to the Regional Administrator.

(2) In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action appealed, and the reasons therefore, and must be submitted within 30 days of the appealed action. The appellant may request an informal hearing on the appeal.

(3) The Regional Administrator, in consultation with the Council, will decide the appeal in accordance with the FMP and implementing regulations and based upon information relative to the application on file at NMFS and the Council, the summary record kept of any hearing, the hearing officer's recommended decision, if any, and any other relevant information.

(4) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. The applicant or permit holder may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. The Regional Administrator's decision on the application is the final administrative decision of the Department of Commerce, and is effective on the date the Administrator signs the decision.

[64 FR 22812, Apr. 28, 1999, as amended at 70 FR 29657, May 24, 2005; 71 FR 53607, Sept. 12, 2006; 71 FR 64477, Nov. 2, 2006; 73 FR 18459, Apr. 4, 2008]

§ 665.62 Prohibitions.

In addition to the general prohibitions specified in §600.725 of this chapter and §665.15, it is unlawful for any person to do any of the following:

(a) Fish for bottomfish or seamount groundfish using gear prohibited under §665.64.

(b) Fish for, or retain on board a vessel, bottomfish management unit species in the Ho'omalau Zone, the Mau Zone, or the Pacific Remote Island Areas without the appropriate permit registered for use

with that vessel issued under §665.13.

- (c) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalulu Zone permit without completing a protected species workshop conducted by NMFS, as required by §665.61.
- (d) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalulu Zone, as required by §665.63.
- (e) Fish within any protected species study zone in the NWHI without notifying the Regional Administrator of the intent to fish in these zones, as required under §665.63.
- (f) Falsify or fail to make or file all reports of bottomfish management unit species landings taken in the Pacific Remote Island Areas, containing all data in the exact manner, as specified in §665.14(a).
- (g) Use a large vessel that does not have a valid Guam bottomfish permit registered for use with that 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 in violation of §665.61(a).
- (h) Use a large vessel to fish for bottomfish management unit species within the Guam large vessel bottomfish prohibited area, as defined in §665.70(b).
- (i) Land or transship, shoreward of the outer boundary of the Guam subarea of the bottomfish fishery management area, bottomfish management unit species that were harvested in violation of §665.62(h).
- (j) Falsify or fail to make or file reports of all fishing activities shoreward of outer boundary of the Main Hawaiian Islands Management Subarea, in violation of §§665.3 or 665.14(a).
- (k) Own a vessel or fish from a vessel that is used to fish non-commercially for any bottomfish management unit species in the Main Hawaiian Islands Management Subarea without either a Main Hawaiian Islands non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of §§665.4 or 665.61(a)(4).
- (l) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in §665.71, in the Main Hawaiian Islands Management Subarea after a closure of the fishery, in violation of §§665.72 or 665.74.
- (m) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in §665.71, after a closure of the fishery, in violation of §§665.72 or 665.74.
- (n) Harvest, possess, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in §665.71 from a vessel in the Main Hawaiian Islands Management Subarea, while holding a Main Hawaiian Islands non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of §665.73.
- (o) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in §665.71, in the Main Hawaiian Islands Management Subarea after a closure of the fishery, in violation of §§665.72, 665.74, or 665.75.
- (p) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in §665.71, after a closure of the fishery, in violation of §§665.72, 665.74, or 665.75.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22814, Apr. 28, 1999; 70 FR 29657, May 24, 2005; 71 FR 53607, Sept. 12, 2006; 71 FR 64477, Nov. 2, 2006; 73 FR 18459, Apr. 4, 2008]

Effective Date Note: At 73 FR 50573, Aug. 27, 2008, §665.62 was amended by suspending paragraphs (l) and (m) and adding paragraphs (o) and (p), effective Aug. 22, 2008 through Nov. 14, 2008.

§ 665.63 Notification.

- (a) The owner or operator of a fishing vessel subject to this subpart must inform the PIRO at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in §665.12. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.
- (b) The operator of a fishing vessel that has taken bottomfish in the Ho'omalulu Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

§ 665.64 Gear restrictions.

- (a) *Bottom trawls and bottom set gillnets.* Fishing for bottomfish and seamount groundfish with bottom trawls and bottom set gillnets is prohibited.
- (b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under §665.61 or otherwise established to be fishing for bottomfish or seamount groundfish in the management subareas is prohibited.
- (c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish and seamount groundfish is prohibited.

§ 665.65 At-sea observer coverage.

- (a) All fishing vessels subject to this subpart must carry an observer when directed to do so by the Regional Administrator.
- (b) The PIRO will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.
- (c) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress of futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other gallery privileges must be the same for the observer as for other crew members.
- (d) Female observers on a vessel with an all-male crew must be accommodated either in a singleperson cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Administrator prior to the vessel's departure from port.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

§ 665.66 Protected species conservation.

The Regional Administrator may change the size of the protected species study zones defined in §665.12 of this subpart:

- (a) If the Regional Administrator determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.
- (b) After consulting with the Council.
- (c) Through notification in the Federal Register published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 665.67 Framework for regulatory adjustments.

(a) *Annual reports.* By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

- (1) Fishery performance data.
- (2) Summary of recent research and survey results.
- (3) Habitat conditions and recent alterations.
- (4) Enforcement activities and problems.
- (5) Administrative actions (e.g., data collection and reporting, permits).
- (6) State and territorial management actions.
- (7) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:
 - (i) Mean size of the catch of any species in any area is a pre-reproductive size.
 - (ii) Ratio of fishing mortality to natural mortality for any species.
 - (iii) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.
 - (iv) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.
 - (v) Substantial decline in ex-vessel revenue relative to baseline levels.
 - (vi) Significant shift in the relative proportions of gear in any one area.
 - (vii) Significant change in the frozen/fresh components of the bottomfish catch.
 - (viii) Entry/exit of fishermen in any area.
 - (ix) Per-trip costs for bottomfishing exceed per-trip revenues for a significant percentage of trips.
 - (x) Significant decline or increase in total bottomfish landings in any area.

- (xi) Change in species composition of the bottomfish catch in any area.
- (xii) Research results.
- (xiii) Habitat degradation or environmental problems.
- (xiv) Reported interactions between bottomfishing operations and protected species in the NWHI.
- (8) Recommendations for Council action.
- (9) Estimated impacts of recommended action.

(b) *Recommendation of management action.* (1) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, state/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(2) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: Catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(3) The Council may recommend management action by either the state/territorial governments or by Federal regulation.

(c) *Federal management action.* (1) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Administrator after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(2) The Regional Administrator will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(3) The Council may appeal denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(4) The Regional Administrator and the Assistant Administrator will make their decisions in accord with the Magnuson Act, other applicable law, and the Bottomfish FMP.

(5) To minimize conflicts between the Federal and state management systems, the Council will use the procedures in paragraph (b) of this section to respond to state/territorial management actions. Council consideration of action would normally begin with a representative of the state or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(d) *Access limitation procedures.* (1) Access limitation may be adopted under this paragraph (d) only for the NWHI, American Samoa, and Guam.

(2) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (d), the following requirements must be met:

(i) The Bottomfish Monitoring Team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(ii) Public hearings must be held specifically addressing the limited access proposals.

(iii) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Administrator on administrative decisions.

(iv) The Council's recommendation to the Regional Administrator must be approved by a two-thirds majority of the voting members.

(e) *Five-year review.* The Council will conduct a comprehensive review on the effectiveness of the Mau Zone limited access program 5 years following implementation of the program. The Council will consider the extent to which the FMP objectives have been met and verify that the target number of vessels established for the fishery is appropriate for current fishing activity levels, catch rates, and biological condition of the stocks. The Council may establish a new target number based on the 5-year review.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22814, Apr. 28, 1999]

§ 665.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 2010.

[69 FR 51401, Aug. 19, 2004]

§ 665.69 Management subareas.

(a) The bottomfish fishery management area is divided into eight subareas with the following designations and boundaries:

(1) Main Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161° 20' W. long.

(2) Northwestern Hawaiian Islands (NWHI) means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161° 20' W. long. However, for the purposes of regulations issued under this subpart, Midway Island is treated as part of the Northwestern Hawaiian Islands Subarea.

(i) Ho'omalulu Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161° 20' W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180° 00' W. long. and north of 28° 00' N. lat.

(4) Guam means the EEZ seaward of the Territory of Guam.

(5) American Samoa means the EEZ seaward of the Territory of American Samoa.

(6) CNMI Inshore Area means that portion of the EEZ shoreward of 3 nautical miles of the shoreline of the CNMI.

(7) CNMI Offshore Area means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(8) Pacific Remote Island Areas means that portion of the EEZ seaward of the Pacific Remote Island Areas, with the exception of Midway Atoll.

(b) The inner boundary of each fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, the Territory of Guam, the CNMI, and the PRIA.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The boundary between the fishery management areas of Guam and the CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI.

[61 FR 34572, July 2, 1996. Redesignated at 71 FR 17989, Apr. 10, 2006, as amended by 71 FR 53607, Sept. 12, 2006]

§ 665.70 Bottomfish fishery area management.

(a) *Large vessel bottomfish prohibited area.* A large vessel of the United States may not be used to fish for bottomfish management unit species in any large vessel bottomfish prohibited area as defined in paragraph (b) of this section.

(b) *Guam large vessel bottomfish prohibited area (Area GU-1).* The large vessel bottomfish prohibited area around Guam means the waters of the US EEZ surrounding Guam that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
GU-1-A	14° 16'	144° 17'
GU-1-B	13° 50'	143° 52'
GU-1-C	13° 17'	143° 46'
GU-1-D	12° 50'	143° 54'
GU-1-E	12° 30'	144° 14'
GU-1-F	12° 25'	144° 51'
GU-1-G	12° 57'	145° 33'
GU-1-H	13° 12'	145° 43'
GU-1-I	13° 29' 44"	145° 48' 27"
GU-1-A	14° 16'	144° 17'

§ 665.71 Hawaii restricted bottomfish species.

Hawaii restricted bottomfish species means the following species:

Common Name	Common Name	Scientific Name
Silver jaw jobfish	Lehi	<i>Aphareus rutilans</i>
Squirrelfish snapper	Ehu	<i>Etelis carbunculus</i>
Longtail snapper	Onaga	<i>Etelis coruscans</i>
Pink snapper	Opakapaka	<i>Pristipomoides filamentosus</i>
Snapper	Kalekale	<i>Pristipomoides sieboldii</i>
Snapper	Gindai	<i>Pristipomoides zonatus</i>
Sea bass	Hapu'upu'u	<i>Epinephelus quernus</i>

[73 FR 18459, Apr. 4, 2008]

§ 665.72 Total Allowable Catch (TAC) limit.

- (a) TAC limits will be set annually for the fishing year by NMFS, as recommended by the Council, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing.
- (b) The Regional Administrator shall publish a notice indicating the annual Total Allowable Catch limit in the Federal Register by August 31 of each year, and shall use other means to notify permit holders of the TAC limit for the year.
- (c) When the TAC limit specified in this section is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the Federal Register and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the TAC is reached.
- (d) On and after the date specified in §665.72(c), no person may fish for or possess any Hawaii Restricted Bottomfish Species as specified in §665.71 in the Main Hawaiian Islands Management Subarea, except as otherwise allowed by law.
- (e) On and after the date specified in §665.72(c), no person may sell or offer for sale Hawaii Restricted Bottomfish Species as specified in §665.71, except as otherwise authorized by law.
- (f) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

[73 FR 18459, Apr. 4, 2008]

§ 665.73 Non-commercial bag limits.

No more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species as specified in §665.71, may be harvested, possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the Main Hawaiian Islands Management Subarea. Charter boat customers are also subject to the bag limit.

[73 FR 18460, Apr. 4, 2008]

§ 665.75 Closed season.

- (a) All fishing for, or possession of, any Hawaii Restricted Bottomfish Species as specified in §665.71, is prohibited in the Main Hawaiian Islands Management Subarea during September 1, 2008, through November 14, 2008, inclusive. All such species possessed in the Main Hawaiian Islands Management Subarea are presumed to have been taken and retained from that Subarea, unless otherwise demonstrated by the person in possession of those species.
- (b) Hawaii Restricted Bottomfish Species, as specified in §665.71, may not be sold or offered for sale during September 1, 2008, through November 14, 2008, inclusive, except as otherwise authorized by law.
- (c) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from paragraphs (a) and (b).

Effective Date Note: At 73 FR 50573, Aug. 27, 2008, §665.75 was added, effective Aug. 22, 2008 through Nov. 14, 2008.

***NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE PD 06-101
JUNE 17, 2006***

Enforcement

VMS Data Access and Dissemination Policy

NOTICE: This publication is available at: <http://www.nmfs.noaa.gov/directives/>.

OPR: EN (D. Jones)

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Type of Issuance: Renewed 08

SUMMARY OF REVISIONS:

Technical revision by deleting ambiguous references to NAO 216-100. The VMS data policy does not modify the scope or effect of NAO 216-100.

Introduction.

This policy establishes procedures to access, disseminate and manage information collected through NOAA's Vessel Monitoring System (VMS).

The National Oceanic and Atmospheric Administration (NOAA) Fisheries Service Office for Law Enforcement (OLE) has been delegated the responsibility to develop, operate and manage NOAA's VMS. Within NOAA Fisheries, OLE is responsible for ensuring the collection, storage and security of original VMS data in a manner which preserves the integrity and credibility of the data commensurate with standards that ensure the data's acceptance for use in investigative and legal proceedings, protected resources and fisheries management, and science.

VMS collects data such as on participating vessels' identity, location and activity throughout the U.S. Exclusive Economic Zone, Pacific and Atlantic Oceans, and other bodies of water for enforcement, management and science purposes pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Authorized use of and access to VMS data is governed by Magnuson-Stevens Act regulations found at 50 CFR 600.405-425 and NAO 216-100.

NOAA Fisheries uses this data for enforcement, fisheries management, science and research.

NOAA Fisheries intends further to develop and use the VMS system as efficiently and effectively as is practical and within the full scope of purpose and utility that the technology may provide.

Objective. The purpose of this policy is to ensure lawful and timely access to, and dissemination and management of, VMS information within NOAA Fisheries and to our external partners.

Authorities and Responsibilities. This directive establishes the following authorities and responsibilities:

Legal Restrictions: Use and dissemination of VMS information is subject to the confidentiality provisions of Section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act and NAO 216-100.

Guidelines and Procedures: It is the policy of NOAA Fisheries to utilize VMS to aid in monitoring, control and surveillance of certain fishing vessels that are management under U.S. fishery management programs and other vessels that may participate.

Authorized Users and Non-Disclosure Agreements: Each authorized user must provide a current, written and signed "Protection of Confidential Fisheries Statistics" agreement (or evidence thereof) to OLE before gaining access to VMS information.

Use, Storage and Disposal of VMS Information: VMS information must be used, stored, and archived or disposed of as authorized and prescribed by legal provisions cited above.

References. This policy directive is supported by the references and glossary of terms listed in Attachment 1.

/s/ June 7, 2006
William T. Hogarth, Ph.D. Date
Assistant Administrator
for NOAA Fisheries

Attachment 1

Magnuson-Stevens Fishery Conservation and Management Act 50 CFR 600.405-425

NOAA Administrative Order 216-100

NOAA FISHERIES SERVICE

VMS Data Access and Dissemination Policy

Effective Date: June 17, 2006

Purpose and Background

The National Oceanic and Atmospheric Administration Fisheries Service Office for Law Enforcement (OLE) has been delegated the responsibility to develop, operate and manage NOAA's Vessel Monitoring System (VMS). This policy establishes procedures to access, disseminate and manage information collected through VMS.

VMS collects data from fisheries vessels for enforcement, management and science purposes pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Authorized use of and access to VMS data is governed by Section 402 of the Magnuson-Stevens Act, its implementing regulations found at 50 CFR 600.405-425 and NAO 216-100.

Within NOAA Fisheries, OLE is responsible for ensuring the collection, storage and security of original VMS data in a manner which preserves the integrity and credibility of the data commensurate with evidentiary standards. This will ensure its acceptance in both legal proceedings, and for use by NOAA Fisheries in protected resources, fisheries management, and science based activities.

VMS provides NOAA information about participating vessels' identity, location and activity throughout the U.S. EEZ, Pacific and Atlantic Oceans, and other bodies of water. VMS can provide 24 or more position reports per day, accurate to 100 meters, 365 days per year to continuously and accurately monitor and enforce time and effort regulations, restricted areas, and international boundaries and obligations, and other fishery management measures.

VMS also provides an effective tool to supplement traditional enforcement activities. For example, VMS can be used to provide a comprehensive surveillance framework and to more efficiently direct the limited number of U.S. Coast Guard assets available for fisheries patrols.

The VMS system is also used extensively to collect data for the purposes of fisheries management, science and research. A number of fishery management plans include VMS requirements. VMS information may also be crucial in making determinations within a timely manner whether catch limits within specially designated areas have been reached. As a tool for protected resources, VMS is used to monitor vessel activities in and near critical habitat areas. VMS is also an invaluable data quality control for use in conjunction with NOAA Fisheries observer programs. Use of VMS data for these purposes is expected to increase in the future.

NOAA Fisheries therefore intends further to develop and use the VMS system as efficiently and effectively as is practical and within the full scope of purpose and utility that the technology may provide.

This purpose of this policy is to ensure lawful and timely access to, and dissemination and management of, VMS information within NOAA Fisheries and to our external partners.

Policy Guidance for VMS Information Access, Dissemination and Management

Legal Restrictions

VMS information collected from fishing vessels is considered “information submitted to the Secretary” in compliance with fishery regulations and, therefore, use and dissemination of the information is subject to the confidentiality provisions of Section 402(b) of the Magnuson-Stevens Act. In specific instances VMS data may also be categorized as Law Enforcement Sensitive due to its nexus with on-going investigations. Use and dissemination of VMS information is subject to additional regulations and restrictions found at 50 CFR 600.405-425 and NAO 216-100.

The NOAA Fisheries Office of Law Enforcement (OLE) will document and maintain a list of all additional authorized users.

Guidelines and Procedures

It is the policy of NOAA Fisheries Service to utilize VMS to aid in monitoring, control and surveillance of certain fishing vessels that are managed under U.S. federal fishery management programs, and other vessels that may participate (voluntarily or otherwise) in the VMS, and to use VMS data for scientific research or management purposes.

The OLE will be responsible for the collection, processing, dissemination, archiving, and/or destroying of VMS information. OLE will provide access to and/or dissemination of VMS information routinely collected to authorized persons. *Information routinely collected* means that information which is required to be collected under the promulgated law or regulation, including all polling times and location information collected by the VMS from fishing vessels.

Under some circumstances, OLE may elect to restrict access to and dissemination of VMS information based on Law Enforcement Sensitive restrictions. For example, this could include information routinely collected and/or specific polling of a vessel over and above the normal polling sequence for such vessels, or additional information collected or generated from a routine VMS investigative operations, such as communications with the vessel. It shall be the responsibility of the OLE to assure that such restrictions occur only as necessary on a case by case basis and only for the minimum time necessary to meet enforcement mission requirements. In determining the need to invoke this restriction the OLE will give careful consideration to the operational needs of other agency components and the potential that such restrictions may diminish or otherwise hamper the mission of others dependent upon the information. In this case, OLE will notify any impacted office prior to restriction of access.

Though OLE is responsible for operation of the VM system, any significant expenses and support resources necessary to effect the distribution of VMS data to entities external to NOAA will be the responsibility of those entities unless otherwise provided for within budgetary and planning decisions. The OLE will support and facilitate a cooperative and participatory approach toward assisting other offices.

Authorized Users and Non-Disclosure Agreements

Pursuant to NAO 216-100, each authorized external party must provide a current, written and signed "Protection of Confidential Fisheries Statistics" agreement (or evidence thereof) to OLE before gaining access to VMS information.

Violations of NAO 216-100 will result in immediate termination of access and/or dissemination of VMS data along with the return of all data previously provided.

VMS Information

a. Use of Information

VMS information requested by an authorized user may be used only for the purpose authorized by legal provisions cited above. Access to the VMS is subject to cancellation and sanctions for improper dissemination of information.

b. Storage of Information

All VMS information must be maintained in a secure records environment to prevent unauthorized access or dissemination.

c. Method of Disposal

VMS information must be used, stored, and archived or disposed of as authorized and prescribed by legal provisions cited above.

***NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE PD 06-101
JUNE 17, 2006***

Enforcement

VMS Data Access and Dissemination Policy

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The NOAA Fisheries Office of Law Enforcement (OLE) will document and maintain a list of all additional authorized users.

Guidelines and Procedures

It is the policy of NOAA Fisheries Service to utilize VMS to aid in monitoring, control and surveillance of certain fishing vessels that are managed under U.S. federal fishery management programs, and other vessels that may participate (voluntarily or otherwise) in the VMS, and to use VMS data for scientific research or management purposes.

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b. Storage of Information

All VMS information must be maintained in a secure records environment to prevent unauthorized access or dissemination.

c. Method of Disposal

VMS information must be used, stored, and archived or disposed of as authorized and prescribed by legal provisions cited above.

Dated: September 3, 2008.

Cheryl A. Oldham,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E8-20776 Filed 9-5-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070720390-81114-02]

RIN 0648-AV28

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures for the Northern Mariana Islands

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish Federal permitting and reporting requirements for all commercial bottomfish vessels fishing in the U.S. Exclusive Economic Zone (EEZ) around the Commonwealth of the Northern Mariana Islands (CNMI). The proposed rule would also close certain EEZ waters around the CNMI to bottomfish fishing by vessels over 40 ft (12.2 m) long. Vessel monitoring system units would be installed on these vessels, and the operators of these vessels would be required to submit Federal sales reports in addition to catch reports. This proposed rule is intended to ensure adequate collection of information about the CNMI commercial bottomfish fishery, provide for sustained community participation, and maintain a consistent supply of locally-caught bottomfish to CNMI markets and seafood consumers. Combined, these measures are intended to prevent the depletion of bottomfish stocks in the CNMI, and to sustain the fisheries that depend on them.

DATES: Comments on this proposed rule must be received by October 23, 2008.

ADDRESSES: Comments on the amendment, identified by 0648-AV28, 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 (if you wish to remain anonymous, enter "NA" in the required name and organization fields). 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 Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP) and proposed Amendment 10 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.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808-944-2271.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also accessible at the Office of the **Federal Register** web site www.gpoaccess.gov/fr.

The bottomfish fishery around the Northern Mariana Islands is managed under the Bottomfish FMP, which was developed by the Council, and approved and implemented by NMFS. The Council has submitted Bottomfish FMP Amendment 10 to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule would implement the management provisions recommended in Amendment 10, if the amendment is approved by the Secretary of Commerce.

CNMI nearshore areas have been fished for years by bottomfish fishermen who engage in a mix of subsistence, recreational, and small-scale commercial fishing. These fishermen typically operate small vessels (less than 25 ft (7.6 m)), and tend to fish more in the summer months when weather and sea conditions are calmer. Most of these small vessels target shallow-water bottomfish, but some also target deep-water species. The catch from these small vessels is destined for local markets and consumers in the CNMI, and is usually not exported.

In addition to small vessels, several larger vessels (over 40 ft (12.2 m) in

length) also target deep-water bottomfish at offshore seamounts and banks. In 2006, for example, there were six large vessels targeting bottomfish around the CNMI. Landings from these large vessels are offloaded on Saipan and in other CNMI commercial ports, and are often exported by air to Japan. Thus, the catch from these large vessels does not enter local markets as a food supply for CNMI residents. If these vessels were to target bottomfish in nearshore waters around CNMI, the resulting fishing pressure could be excessive on bottomfish stocks at nearshore banks, potentially threatening both the fish stocks and the fisheries that have historically been dependent on these resources.

The CNMI is relatively close to Guam, and it is possible for large bottomfish vessels based in Guam to travel to fishing grounds in the CNMI. NMFS recently implemented a final rule that prohibits large vessels (i.e., greater than 50 ft (15.2 m)) from bottomfish fishing within 50 nm (80.5 km) around Guam (71 FR 64474; November 2, 2006). Without similar closed areas around the CNMI, operators of these large Guam-based vessels may choose to fish for bottomfish within U.S. EEZ waters around the CNMI. This could result in excessive fishing pressure on bottomfish stocks at nearshore banks, potentially threatening both the fish stocks and the fisheries that have historically been dependent on these resources.

In addition to the possibility of Guam-based vessels entering the CNMI bottomfish fishery, the Council is concerned about several other issues regarding bottomfish fishing in the CNMI. First, existing data collection programs in the CNMI are insufficient to monitor catches and determine the impacts of the fishery on the bottomfish stocks being harvested, or to determine the species composition and amount of discarded catch. Second, large bottomfish vessels need to harvest relatively large catches to cover operational costs, and these large catches could deplete nearshore stocks. Stock depletion would threaten the sustainability of the CNMI bottomfish fishery, and if catch rates were significantly reduced, small vessels would not be able to continue operating. Finally, because the catches from large vessels are typically exported, traditional patterns of supply and consumption of bottomfish in the local community would be disrupted.

In response to these concerns, the Council developed Amendment 10 with the following objectives: (1) ensure that adequate information is routinely collected for the CNMI offshore

bottomfish fishery; (2) provide for sustained community participation; and (3) encourage the consistent availability of locally-caught deepwater bottomfish to CNMI markets and consumers.

The issues considered here were first raised in 2001 by CNMI members of the Council's Advisory Panel. The Council and its advisory groups discussed these issues during 2001 and 2002, and the Council first took action on the measures contained in this document on February 13, 2003, at its 117th Council meeting held in Saipan, CNMI. A range of alternatives and preliminary analyses of their anticipated impacts were presented for consideration and the Council identified several management recommendations. Following further public comments, at its 118th meeting (June 2003, in Honolulu, Hawaii) the Council again considered this matter and recommended that additional input on the issue and alternatives be solicited from the CNMI government. Correspondence with the CNMI governor, and public input during a series of scoping sessions in the CNMI, led to the development and analysis of a revised set of management recommendations, adopted at the Council's 126th meeting held March 14–17, 2005, in Honolulu, Hawaii. The Council then prepared Amendment 10

(including an environmental assessment) that contains background information on the issue, associated analyses, and proposed regulatory changes for consideration by NMFS. This proposed rule would implement the management measures recommended in Amendment 10.

This proposed rule would require the owners of all vessels commercially fishing for bottomfish management unit species (BMUS) in EEZ waters around the CNMI to obtain Federal fishing permits. Permit eligibility would not be restricted, and permits would be renewable on an annual basis. NMFS has initially determined that a permit fee of \$80 is appropriate, but will consider whether a lesser cost is sufficient to cover the administrative costs of the permit. The amount of the permit 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 permit application form.

This proposed rule would require the operators of all commercial bottomfish vessels to complete and submit Federal catch reports. These daily reports are logbooks that contain the fisherman's record of bottomfish fishing effort,

catch, discards, interactions with protected species, and related information. In addition to the fishing logbook, vessels over 40 ft (12.2 m) fishing for bottomfish in the CNMI would be required to complete and submit Federal sales reports for the bottomfish that they sell.

This proposed rule would close certain EEZ waters around the CNMI to bottomfish fishing by vessels over 40 ft (12.2 m). The closed areas would include EEZ waters from the shoreline to 50 nm (80.5 km) around the southern islands of the CNMI, from the Guam-CNMI EEZ boundary to a line halfway between Farallon de Medinilla and Anatahan Islands, and EEZ waters from the shoreline to 10 nm (18.5 km) around the northern island of Alamagan (Fig. 1). The closed area boundaries would be defined by straight lines for clarity and to facilitate enforcement. Transshipping of bottomfish would continue to be allowed within the closed areas. Any vessel commercially receiving bottomfish fish or fish products from a fishing vessel would be required to be registered with a valid CNMI commercial bottomfish permit, and the operator would be required to report any bottomfish transshipping activity in the Federal fishing logbook forms.

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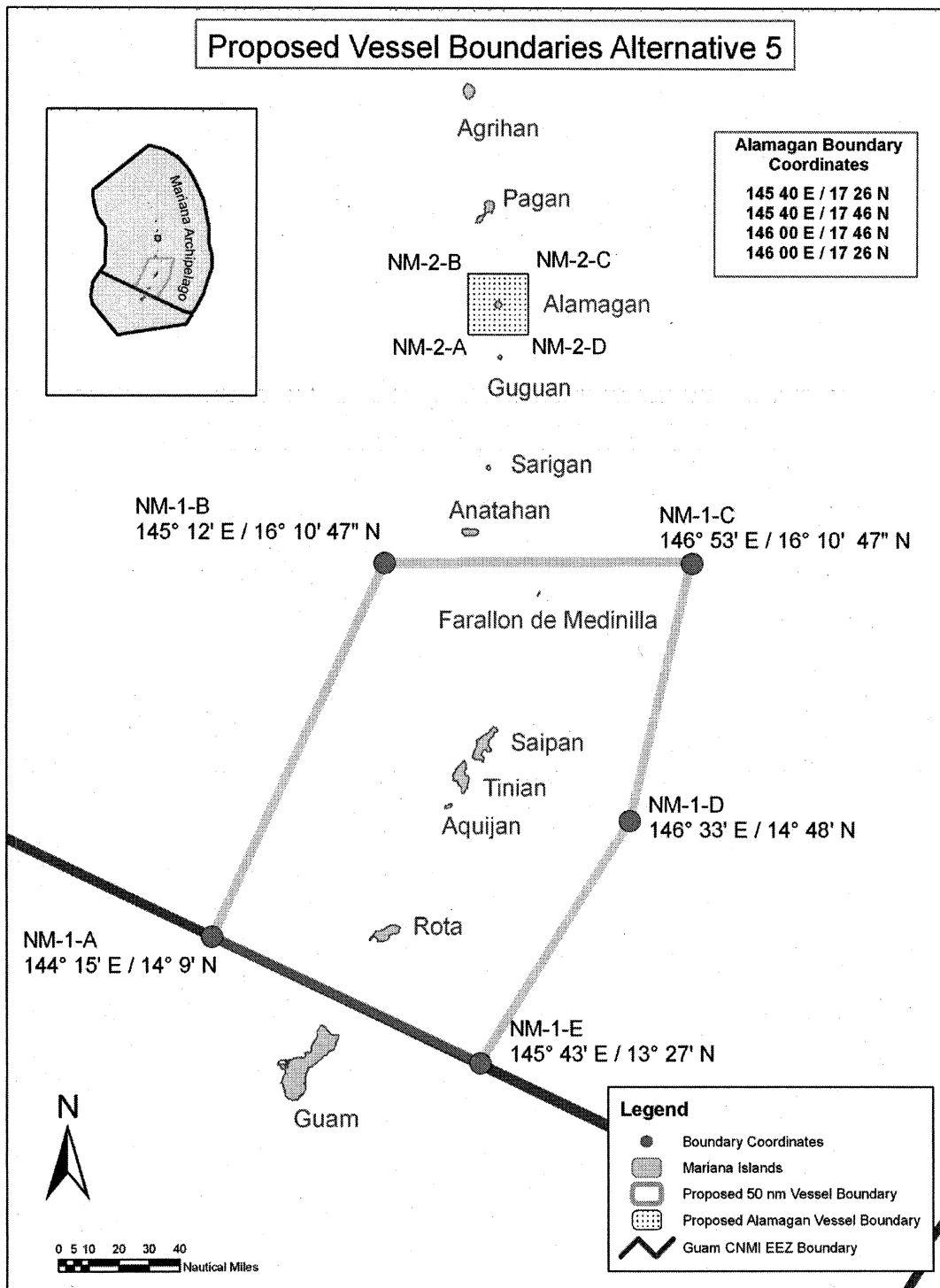


Figure 1. Proposed CNMI medium and large vessel prohibited areas.

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Shipboard vessel monitoring system (VMS) units would be required on vessels over 40 ft (12.2 m). The VMS is an automated, satellite-based system that assists NOAA's Office for Law Enforcement and the U.S. Coast Guard

in monitoring compliance with closed areas in a reliable and cost-effective manner. Electronic VMS shipboard equipment installed permanently on board a vessel provides information about the vessel's position and activity. That information is communicated

between the shipboard VMS unit and the monitoring agency's fishery monitoring center, where the identity and location of the vessels are shown on a map display, comparing vessel positions with features of interest, such as closed area boundaries. The Pacific

Islands VMS was developed in cooperation with fishermen, fishery managers, the U.S. Coast Guard, and other government agencies, and is currently used in the Hawaii- and American Samoa-based longline fisheries, and in the bottomfish fishery operating in the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands (NWHI).

CNMI-registered bottomfish vessels are required to be marked with their official number in block lettering of a minimum of three inches (7.6 cm) high. The implementation of the new CNMI commercial bottomfish permit would tie to a related Federal vessel identification requirement in § 665.16 that requires Federal permit holders to mark their vessels in a specific way using much larger lettering. These Federal vessel identification requirements were created for large commercial fishing vessels to assist in aerial and at-sea enforcement of fishing regulations. The typical CNMI-based commercial bottomfish vessel, however, is not large enough to have the superstructure or deckhouse to support the Federal vessel identification markings. The proposed rule would exempt CNMI-based commercial bottomfish vessels from the Federal vessel identification requirements, if the vessels are less than 40 ft (12.2 m) long and in compliance with CNMI vessel registration and marking requirements. Commercial CNMI bottomfish vessels over 40 ft (12.2 m) would be required to be marked in compliance with Federal vessel identification requirements.

To date, the regional requirements for VMS in 50 CFR part 665 have applied only to pelagic longline fishing, so the requirements are located in the pelagic fisheries section of the regulations. (The VMS requirements for the NWHI bottomfish fishery are found in 50 CFR 404.5 and are not affected by this proposed rule.) Because the proposed rule would add VMS requirements for bottomfish fishing, the section regarding the vessel monitoring system (§ 665.25) would be moved from the pelagic fishery requirements to the general requirements and renumbered as § 665.19. Accordingly, the VMS-related prohibitions found in § 665.22 would also be moved to the general prohibitions in § 665.15. The VMS-related requirements would also be clarified to require that VMS units be installed and operational when vessels are at sea.

In the definition of bottomfish management unit species, the scientific name for armorhead is revised to the valid taxonomic name, and the scientific name of the pink snapper is revised to include the species, which

was inadvertently omitted from the definition. The spellings of local names of the longtail and pink snappers are also corrected. In the definition of receiving vessel permit, the cross-reference to receiving vessel permits for pelagic longlining is corrected to the proper paragraph.

Comments on this proposed rule must be received by October 23, 2008. To be considered, comments must be received by close of business on October 23, 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 10 through October 20, 2008, as stated in the Notice of Availability published on August 20, 2008 (73 FR 49157). Public comments on this proposed rule, if received by October 20, 2008, will also be considered in the approval/disapproval decision for Amendment 10. Comments received after that date may not be considered in the approval/disapproval decision for Amendment 10, 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 Bottomfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

The Council prepared an Environmental Assessment for Amendment 10 that evaluates the potential impacts of the proposed action and alternatives. A copy of the environmental assessment is available from the Council (see **ADDRESSES**).

The purpose and need for the proposed action is to monitor the CNMI bottomfish fishery, to sustain community participation in the bottomfish fishery (i.e., small-scale fishing, community exchange, and sale), and to encourage consistent availability of locally-caught bottomfish in the CNMI.

Five alternatives were considered: Alternative 1 - No action, Alternative 2 - Establish a 3–50 nm (5.6–80.5 km) closure for large vessels (over 50 ft (15.2 m)) and other permitting and reporting measures, Alternative 3 - Establish a 250 lb (113 kg) limit for onaga (longtail snapper, *Etelis coruscans*) per trip (all fishermen on the trip combined) outside 3 nm (5.6 km) from the CNMI, Alternative 4 - Limit entry to recent documented fishery participants outside 3 nm (5.6 km) from the CNMI, and 5 -

Establish a 50 nm (80.5 km) closure for vessels over 40 ft (12.2 m) and other permitting and reporting measures. Alternative 5 was selected as the preferred alternative. The action would establish a 50 nm (80.5 km) closed area for commercial bottomfish vessels over 40 ft (12.2 m) around the southern islands in the CNMI, and would also establish a 10 nm (18.5 km) closure around the northern island of Alamagan. Vessels over 40 ft (12.2 m) would be required to have VMS units installed, and the operators would be required to submit Federal sales reports for the bottomfish they sell. Alternative 5 would also require Federal fishing permits and data reporting for all commercial bottomfish vessels.

The Council expects that the proposed rule would maintain or improve current levels of bottomfish recruitment and control the risk of localized depletion from nearshore fishing by medium and large vessels. The proposed rule would maintain the opportunity for viable catch rates at banks within the limited fishing range of smaller vessels in the CNMI, which would promote social and economic stability within the community-based fishery and help preserve elements of the local fishing culture. The rule may discourage (but would not prohibit) expansion of the medium and large vessel sectors.

Most CNMI commercial bottomfish vessels are smaller than 40 ft (12.2 m) and generally around 25 ft (7.6 m). There are currently no active large vessels in the fishery. Six vessels larger than 40 ft (12.2 m) were active in 2006, and one in 2007. The closed areas around Saipan and Alamagan would serve to discourage (but would not prohibit) the renewal of a large-vessel export-oriented bottomfish fishery. These large vessels would still be able to fish in waters beyond 50 nm (80.5 km) around the southern CNMI islands, outside of 10 nm (18.5 km) around Alamagan, and in all other waters of the northern CNMI. The permitting and data collection measures would improve information that is available to fishery scientists and managers, and would be used to improve stock assessments and support management measures that achieve optimum yields and maintain a sustainable fishery. The proposed rule would help to ensure the availability of locally-caught bottomfish for CNMI's consumers, enable larger vessels to continue to harvest bottomfish, and continue some opportunities for overseas bottomfish sales.

By reducing the potential for fishing pressure from medium and large vessels, the proposed rule is expected to

reduce the risk of nearshore bottomfish depletion and ensure healthy bottomfish stocks. Catches of non-target fish are low because of the selective nature of the fishing gear used, and these non-target catches are expected to remain low as a result of the reduced fishing effort.

The proposed rule is not expected to have a significant adverse impact on coastal, demersal, or other marine habitats including essential fish habitat or habitat areas of particular concern. The proposed measures are intended to reduce fishing pressure on nearshore bottomfish areas, and would result in a few larger vessels being required to move further offshore. There is a slight potential for increased impacts of bottomfish fishing on the essential fish habitat of offshore banks, but because of the gear types used in the fishery, and the proposed requirements for permits and reporting, the impacts are not expected to be significant.

No significant adverse impacts are expected on protected marine mammals, sea turtles, or seabirds. In general, the CNMI bottomfish and pelagic fisheries are small-scale hook-and-line fisheries with few to no interactions with marine mammals, sea turtles, or seabirds. The proposed rule would reduce fishing pressure within 50 nm (80.5 km) of the CNMI southern islands and 10 nm (18.5 km) of Alamagan Island, and is not expected to result in significant changes in fishing interactions with protected species in other areas.

Positive impacts on the catch rates for small vessels are expected because medium and large commercial bottomfish fishing vessels would be prohibited from fishing near the southern islands and Alamagan. Negative impacts may be expected for medium and large commercial vessels due to increased operating costs associated with fishing beyond the closed area boundaries. This negative impact may be offset by higher bottomfish catch rates in the offshore areas that have been fished to a lesser degree. Given that no large commercial bottomfish vessels are thought to be operating around the southern islands or Alamagan at this time, no immediate impacts are expected and future fishing operations would be able to anticipate the expenses.

There would be additional administrative burdens and costs to NMFS for implementing the proposed rule. These costs would vary depending on the size of the CNMI commercial bottomfish fishery. The Federal permit program is expected to cost \$20–35K annually. The cost to establish the data reporting program is estimated to be

about \$70K, and the annual operating costs, including shoreside monitoring, is estimated at about \$100K. The costs to NMFS and the USCG to enforce the permitting, data reporting, and closed area requirements (including the VMS program) are expected to be \$372–403K for the first year, and \$260–290K annually after that.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

Description of Small Entities to Which the Rule Would Apply

The preferred alternative would apply to all vessels commercially fishing for bottomfish in U.S. EEZ waters around CNMI. Given an annual average of 58 known commercial fish harvesting vessels between 2001–05, with an annual average fleet-wide adjusted revenue of \$136,827, it is estimated that each vessel operator realized an average of \$2,359 in annual ex-vessel gross revenues from their bottomfish fishing operations. Because each vessel has gross receipts under \$4.0 million, is independently owned and operated, and is not dominant in its field, all vessels comprising this fishery are deemed to be small entities under the Small Business Administration's definition of a small fish harvester. In 2005, 62 vessels less than 40 ft (12.2 m) participated in the CNMI bottomfish fishery. As many as eleven medium and large vessels (i.e., greater than 40 feet or 12.2 m) are believed to have participated in this fishery since 1997. Information from fisheries officials in the CNMI indicate that there were six active medium and large vessels in 2006, and one in 2007.

Description of Alternatives

Alternative 1: No Action. In the short-term, fishery participants would be expected to continue their normal operations. In the longer-term, economic impacts (including market and non-market impacts) on small-vessel commercial, recreational, and charter fishery participants could be negative if localized depletion of bottomfish occurs within their limited fishing range. Due to their larger vessel sizes, larger-scale commercial bottomfish operations (which are still considered small entities) would still have access to offshore fishing areas. Smaller vessels would not, however, and could see bigger losses. Operators of the smaller vessels already generally participate in more than one fishery over the course of a year, and would likely shift their bottomfish fishing effort to other boat-based fisheries (e.g.,

pelagic trolling). Whether or not they would be able to recoup their lost bottomfish income is unclear, but a disruption of the nearshore bottomfish fishery would represent a reduction in their portfolio of fishing opportunities.

Alternative 2: Prohibit commercial fishing for bottomfish management unit species (BMUS) by vessels greater than 50 ft (15.2 m) within U.S. EEZ waters 3–50 nm (5.6–80.5 km) around the CNMI; require that operators of vessels greater than 50 ft (15.2 m) that land BMUS in the CNMI have Federal fishing permits and submit Federal logbooks of their associated catch and effort. Alternative 2 may have more positive impacts than Alternative 1 for small-vessel commercial, recreational, and charter fishery participants by maintaining the opportunity for viable catch rates at banks within their limited fishing range around the CNMI. Unlike Alternative 1, Alternative 2 could cause negative impacts on the large-vessel commercial sector of the fishery (whose participants are still considered small entities) through the realization of increased operating costs necessitated by the requirement that large vessels fish on banks greater than 50 nm (80.5 km) from the CNMI, although this impact might be offset initially by higher bottomfish catch rates at more distant seamounts that remain open to large vessels. Likely areas for bottomfish fishing more than 50 nm (80.5 km) from shore are a chain of seamounts, some rising to shallow depths, about 200 nm (370 km) west of the Mariana Islands. As these areas have not been previously fished by the CNMI fleet, there would be a high cost associated with exploring the bottomfish fishing potential of these seamounts and their catch rates are unknown.

As compared to the No Action Alternative, Alternative 2 would eliminate commercial bottomfish fishing by large vessels (still considered small entities for purposes of this analysis) in waters 3–50 nm (5.6–80.5 km) around the CNMI. There may be immediate impacts to vessel operations under this alternative as there may be some large commercial bottomfish fishing vessels active in waters within 50 nm (80.5 km) of the Northern Islands, though none is believed to be active in waters around the Southern Islands. This alternative would eliminate the potential renewal or expansion of the large vessel fishery sector in waters around Saipan. Thus, Alternative 2 would have greater potential than Alternative 1 for reducing the risk of local depletion of areas around Saipan that are fished by small-scale fishermen. A chain of seamounts lies parallel to the Mariana Archipelago nearly 200 nm (370 km) to the west. Some of these seamounts rise to shallow depths, but the seamounts are poorly-charted and the associated bottomfish habitat is not known. Whether or not large vessels would invest time and money in exploring these seamounts for bottomfish grounds under this alternative is unknown. In the long-term, this alternative would foreclose the opportunity for commercial bottomfish fishing using large vessels in the closed areas.

This alternative would require the operators of CNMI-based vessels larger than 50 ft (15.2 m) commercially fishing for bottomfish in U.S. EEZ waters around the CNMI to obtain Federal fishing permits and to submit Federal catch reports. Permit eligibility would not be restricted, and the permit would be renewable on an annual basis. It is anticipated that initial permit applications would require 0.5 hr per applicant, with renewals requiring an additional 0.5 hr annually. No special skills beyond the ability to read and write in English would be required to complete the permit application, logbooks or sales reports. The fee for the proposed Federal fishing permit is proposed to be \$80, and would be 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. In developing the final rule, NMFS may consider whether a lesser permit fee is appropriate. A \$20 permit fee would represent approximately 0.8 percent of revenues earned by individual vessels in the 2001–05 fishery. Similarly, a \$40 permit fee would represent about 1.7 percent, a \$60 fee would be about 2.6 percent, and an \$80 fee would represent about 3.4 percent of revenues earned by individual vessels in the 2001–05 fishery.

Alternative 3: Limit onaga landings to no more than 250 lb (113 kg) per trip for any vessel fishing in U.S. EEZ waters beyond 3 nm (5.6 km) around the CNMI. Alternative 3 would be expected to yield beneficial economic impacts for small vessels that target onaga (longtail snapper). They would be expected to maintain their opportunities for viable onaga catch rates at banks within their limited fishing range, as the reduced fishing revenues expected with a per-trip limit of 250 lb (113 kg) of onaga would discourage competition from large-scale, commercial onaga-fishing operations. Economic impacts on these large-scale operations (still considered small entities) would be adverse, as a 250-lb (113-kg) trip limit would not yield enough revenues to cover trip costs, and these trips would be expected to become economically inefficient. This would be expected to discourage medium/large vessels from entering the fishery.

Alternative 4: Establish a limited access program with Federal permit and reporting requirements, for vessels targeting BMUS more than 3 nm (5.6 km) around the CNMI. Alternative 4 would likely have a positive economic impact on catch rates and ex-vessel revenues for fishery participants who have a documented history of bottomfish fishing in the U.S. EEZ, but a negative impact for undocumented or future potential participants. Limiting total fishery participation would be expected to result in increased catch rates for qualifying participants, fishing efficiency, and profits for those who qualify and continue fishing. Economic impacts on existing and future non-qualifiers would be highly adverse, with no bottomfish catches or revenues available for this group. If limited-access permits were transferable, this alternative would also

create an economic value for these permits, as the original qualifiers could subsequently sell or lease them to a new round of participants. This would represent a windfall profit to the original qualifiers.

This alternative would require the operators of all CNMI-based vessels commercially fishing for bottomfish in U.S. EEZ waters around the CNMI to obtain Federal fishing permits and to submit Federal catch reports. Permit eligibility would not be restricted in any way, and permits would be renewable on an annual basis. It is anticipated that initial permit applications would require 0.5 hr per applicant, with renewals requiring an additional 0.5 hr annually. The fee for the proposed Federal fishing permit is proposed to be \$80, and would be calculated in accordance with the procedures of the NOAA Finance Handbook. A \$20 permit fee would represent approximately 0.8 percent of revenues earned by individual vessels in the 2001–05 fishery. Similarly, a \$40 permit fee would represent about 1.7 percent, a \$60 fee would be about 2.6 percent, and an \$80 fee would represent about 3.4 percent of revenues earned by individual vessels in the 2001–05 fishery. Based on experience in other fisheries, it is expected that the time requirement for filling out Federal catch reports would be approximately 20 min per vessel per fishing day. No special skills beyond the ability to read and write in English would be required to complete the permit application, logbooks or sales reports.

Alternative 5 (Preferred): Prohibit commercial fishing for BMUS by medium and large vessels within U.S. EEZ waters 0–50 nm (0–80.5 km) around CNMI in the area from the southern boundary of the EEZ (south of Rota) to the north latitude of 16 10' 47" (halfway between Farallon de Medinilla to Anatahan) and within EEZ waters 0–10 nm (0–18.5 km) around Alamagan Island; require that medium and large vessels fishing commercially for BMUS in EEZ waters around the CNMI carry operating VMS units, and complete Federal sales reports for any BMUS sold in the CNMI; require that operators of all vessels fishing commercially for BMUS in EEZ waters around the CNMI have Federal fishing permits and submit Federal logbooks of their associated catch and effort. The impacts of Alternative 5 on commercial bottomfish vessels over 40 ft (12.2 m) would be similar to those of Alternative 2. However, the impacts to the catch rates and ex-vessel revenues of small-vessel fishermen would be more pronounced, as medium and large commercial bottomfish fishing vessels (though still considered small entities) would be prohibited from fishing around the southern islands and Alamagan. The recent general absence of such vessels from the fishery suggests that the area is not profitable for these vessels, and fishing in the restricted area may be more opportunistic than planned. Therefore, restricting medium and large vessels in the area may yield only a minimal adverse economic impact to individual vessels, mitigated by profitable opportunities elsewhere.

This alternative would require the operators of all CNMI-based vessels commercially fishing for bottomfish in U.S.

EEZ waters around the CNMI to obtain Federal fishing permits and to submit Federal catch reports. Permit eligibility would not be restricted in any way, and the permit would be renewable on an annual basis. It is anticipated that initial permit applications would require 0.5 hr per applicant, with renewals requiring an additional 0.5 hr annually. The fee for the proposed Federal fishing permit is proposed to be \$80, and would be calculated in accordance with the procedures of the NOAA Finance Handbook. A \$20 permit fee would represent approximately 0.8 percent of revenues earned by individual vessels in the 2001–05 fishery. Similarly, a \$40 permit fee would represent about 1.7 percent, a \$60 fee would be about 2.6 percent, and an \$80 fee would represent about 3.4 percent of revenues earned by individual vessels in the 2001–05 fishery. Based on experience in other fisheries, it is expected that the time requirement for filling out Federal catch reports would be approximately 20 min per vessel per fishing day. No special skills beyond the ability to read and write in English would be required to complete the permit application, logbooks and sales reports.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), including permits, catch and sales reports, vessel identification, and VMS. These requirements have been submitted to OMB for approval. Permit eligibility would not be restricted in any way, and the permit would be renewable on an annual basis. The Council 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 50 to 125 permit applications each year. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at 25 to 62 hours per year. NMFS has initially determined that a permit fee of \$80 is appropriate, but will consider whether a lesser cost is sufficient to cover the administrative costs of the permit.

The proposed rule would also require the operators of all vessels commercially fishing for bottomfish in U.S. EEZ waters around the CNMI to complete and submit Federal catch reports. The Council anticipates the time requirement to complete Federal catch reports to be approximately 20 minutes per vessel per fishing day. Assuming that the 50 to 125 vessels make 10 to 50 trips per year, and average 1.2 days per trip, the program would generate in the range of 600 to 7,500 daily fishing logbooks per year. Thus, the total collection-of-information burden estimate for fishing data reporting is estimated at 200 to 2,500 hours per year.

The proposed rule would also require the operators of medium and large commercial bottomfish vessels to complete and submit Federal sales reports. The Council anticipates the time requirement for completing Federal sales reports to be approximately 35 minutes per vessel per fishing trip. Assuming six medium and large vessels make 15 trips per year, the program would generate approximately 90 sales reports per year. Thus, the total collection-of-information burden estimate for sales data reporting by fishermen is estimated at 52 hours per year. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information.

For the medium and large vessel identification requirements, the burden is estimated at 45 minutes to paint each vessel (15 minutes for each of three locations on the vessel where marking is required), and about \$10 for paint and supplies. Assuming six medium and large bottomfish vessels are active, the total collection-of-information burden estimate is 4.5 hours and \$60.

For the medium and large vessel VMS requirements, the estimated time per response is four hours to install a VMS unit, and two hours per year to repair and maintain a VMS unit. Assuming six medium and large bottomfish vessels

are active, the total collection-of-information burden estimate for compliance with VMS requirements is 24 hours the first year and 12 hours annually after that.

Public comment is sought regarding: whether this proposed collections of information are 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 collections 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 email to *David_Rostker@omb.eop.gov* or by 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, Reporting and recordkeeping requirements.

Dated: August 29, 2008.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, 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 part 665 continues to read as follows:

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

2. In § 665.12, add the definitions of “CNMI commercial bottomfish permit”, “Medium vessel”, and “Receiving vessel” in alphabetical order, and in the definition of “Bottomfish management unit species” revise the Hawaiian local name of longtail snapper and the Samoan local name and scientific name of pink snapper, in the definition of “Seamount groundfish” revise the scientific name of armorhead, and revise the definitions of “Receiving vessel permit” and “Vessel monitoring system unit” to read as follows:

§ 665.12 Definitions.

* * * * *

Bottomfish management unit species means the following fish:

Common name	Local name	Scientific name
Longtail snapper	Onaga, ula'ula (H); palu-loa (S)	<i>Etelis coruscans.</i>
Pink snapper	Opakapaka (H); palu-ena 'ena (S); gadao (G)	<i>Pristipomoides filamentosus.</i>

* * * * *

CNMI commercial bottomfish permit means the permit required by § 665.61 (a)(5) to engage in commercial fishing for bottomfish management unit species in U.S. EEZ waters around the CNMI.

* * * * *

Medium vessel, as used in §§ 665.61 through 665.72, means any vessel equal to or more than 40 ft (12.2 m) and less than 50 ft (15.2 m) in length overall.

* * * * *

Receiving vessel means a vessel that receives fish or fish products from a fishing vessel, and with regard to a vessel holding a permit under § 665.21(e) that also lands Pacific Pelagic Management Unit Species taken by other vessels using longline gear.

Receiving vessel permit means a permit required by § 665.21(e) for a receiving vessel to transship or land

Pacific pelagic management unit species taken by other vessels using longline gear.

* * * * *

Seamount groundfish means the following species:

Common name	Scientific name
Armorhead	<i>Pseudopentaceros richardsoni</i>

* * * * *

Vessel monitoring system unit (VMS unit) means the hardware and software owned by NMFS, installed on vessels by NMFS, and required to track and transmit the positions of certain vessels.

* * * * *

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) CNMI commercial bottomfish permit.

* * * * *

4. In § 665.14, revise paragraphs (a)(1), (a)(2)(i), and (c) to read as follows:

§ 665.14 Reporting and recordkeeping.

(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), 665.61(a)(5), 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)(3), 665.61(a)(5), 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 (a)(2)(iii) of this section.

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of § 665.41, or the owner of a medium or large fishing vessel subject to the requirements of § 665.61(a)(5), must submit to the Regional Administrator, within 72 hours of offloading crustacean or bottomfish management unit species, respectively, 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.

§ 665.22 [Amended]

5. Redesignate paragraphs (o) through (u) in § 665.22 as paragraphs (m) through (s) in § 665.15, and revise newly-redesignated paragraphs (m) through (s) in § 665.15 to read as follows:

§ 665.15 Prohibitions.

(m) Fish for, catch, or harvest management unit species with longline

gear without an operational VMS unit on board the vessel after installation of the VMS unit by NMFS, in violation of § 665.19(e)(2).

(n) Possess management unit species, that were harvested after NMFS has installed the VMS unit on the vessel, on board that vessel without an operation VMS unit, in violation of § 665.19(e)(2).

(o) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or attempt any of the same; or move or remove a VMS unit without the prior permission of the SAC in violation of § 665.19(e)(3).

(p) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit, in violation of § 665.19(e)(1).

(q) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit, in violation of § 665.19(e)(1).

(r) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer, in violation of § 665.28(f)(4).

(s) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC, in violation of § 665.19(f).

6. In § 665.16, add new paragraph (e)(2) to read as follows:

§ 665.16 Vessel identification.

* * * * *

(e) * * *

(2) A vessel less than 40 ft (12.2 m) in length registered for use under a CNMI commercial bottomfish permit that is in compliance with CNMI bottomfish vessel registration and marking requirements.

§ 665.25 [Redesignated as § 665.19]

7. Redesignate § 665.25 as new § 665.19, and revise newly-redesignated § 665.19 to read as follows:

§ 665.19 Vessel monitoring system.

(a) *Applicability.* The holder of any of the following permits is subject to the vessel monitoring system requirements in this part:

(1) Hawaii longline limited access permit issued pursuant to § 665.21(b);

(2) American Samoa longline limited entry permit, for vessel size Class C or D, issued pursuant to § 665.21(c);

(3) Vessels permitted to fish in Crustaceans Permit Area 1 VMS Subarea; or

(4) CNMI commercial bottomfish permit, if the vessel is a medium or large bottomfish vessel, issued pursuant to § 665.61(a)(5).

(b) *VMS unit.* Only a VMS unit owned by NMFS and installed by NMFS

complies with the requirement of this subpart.

(c) *Notification.* After a permit holder subject to this part has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry and operate the VMS unit after the date scheduled for installation.

(d) *Fees and charges.* During the experimental VMS program, the holder of a permit subject to this part shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(e) *Permit holder duties.* The holder of a permit subject to this part, and master of the vessel, must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry and continuously operate the VMS unit on board whenever the vessel is at sea.

(3) Not remove, relocate, or make non-operational the VMS unit without prior approval from the SAC.

(f) *Authorization by the SAC.* The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

8. In § 665.61, add new paragraph (a)(5) to read as follows:

§ 665.61 Permits.

(a) * * *

(5) *Commonwealth of the Northern Mariana Islands (CNMI) commercial.* The owner of any vessel used to commercially fish for, transship, receive, or land bottomfish management unit species shoreward of the outer boundary of the CNMI management subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

9. In § 665.62, add paragraphs (o) through (r) to read as follows:

§ 665.62 Prohibitions.

* * * * *

(o) Use a vessel to fish commercially for bottomfish management unit species shoreward of the outer boundary of the CNMI subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.61(a)(5).

(p) Use a medium or large vessel to fish for bottomfish management unit species within the CNMI medium and large vessel bottomfish prohibited areas, as defined in § 665.70(b).

(q) Retain, land, possess, sell, or offer for sale, shoreward of the outer boundary of the CNMI subarea, bottomfish management unit species that were harvested in violation of § 665.62(p), except that bottomfish management unit species that are harvested legally may be transferred to a receiving vessel shoreward of the outer boundary of the CNMI medium and large vessel bottomfish prohibited area as defined in § 665.70(b).

(r) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(a) when using a vessel to engage in commercial fishing for bottomfish management unit species shoreward of the outer boundary of the CNMI subarea in violation of § 665.14(a).

10. In § 665.69, remove paragraph (a)(7) and redesignate paragraph (a)(8) as paragraph (a)(7), and revise paragraph (a) introductory text, paragraphs (a)(6), and (c) to read as follows:

§ 665.69 Management subareas.

(a) The bottomfish fishery management area is divided into subareas with the following designations and boundaries:

* * * * *

(6) *CNMI Management Subarea* means the EEZ seaward of the CNMI. The CNMI Management Subarea is further divided into subareas with the following designations and boundaries:

(i) *CNMI Inshore Area* means that portion of the EEZ within 3 nautical miles of the shoreline of the CNMI.

(ii) *CNMI Offshore Area* means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

* * * * *

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries, except that the outer boundary of the CNMI Inshore Area is 3 nautical miles from the shoreline. The boundary between the fishery management areas of Guam and the CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI.

11. Revise § 665.70 to read as follows:

§ 665.70 Bottomfish fishery area management.

(a) *Guam large vessel bottomfish prohibited area (Area GU-1)*. A large vessel of the United States may not be used to fish for bottomfish management unit species in the Guam large vessel bottomfish prohibited area, defined as the U.S. EEZ waters surrounding Guam that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
GU-1-A	14°16'	144°17'
GU-1-B	13°50'	143°52'
GU-1-C	13°17'	143°46'
GU-1-D	12°50'	143°54'
GU-1-E	12°30'	144°14'
GU-1-F	12°25'	144°51'
GU-1-G	12°57'	145°33'
GU-1-H	13°12'	145°43'
GU-1-I	13°29'44"	145°48'27"
GU-1-A	14°16'	144°17'

(b) *CNMI medium and large vessel bottomfish prohibited areas*. A medium or large vessel of the United States may not be used to fish commercially for bottomfish management unit species in the following areas:

(1) *CNMI Southern Islands (Area NM-1)*. The CNMI Southern Islands prohibited area is defined as the waters of the U.S. EEZ surrounding the CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM-1-A	14°9'	144°15'
NM-1-B	16°10'47"	145°12'
NM-1-C	16°10'47"	146°53'
NM-1-D	14°48'	146°33'
NM-1-E	13°27'	145°43'
NM-1-A	14°9'	144°15'

(2) *CNMI Alamagan Island (Area NM-2)*. The CNMI Alamagan Island prohibited area is defined as the waters of the U.S. EEZ surrounding the CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM-2-A	17°26'	145°40'
NM-2-B	17°46'	145°40'
NM-2-C	17°46'	146°00'
NM-2-D	17°26'	146°00'
NM-2-A	17°26'	145°40'

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