

Dated: November 17, 2010.

**G. Jeffrey Herndon,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## **PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.602 is amended by revising paragraph (a) introductory text and alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

### **§ 180.602 Spiroxamine; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the fungicide spiroxamine, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the following table is to be determined by measuring only spiroxamine, [(8-(1,1-dimethylethyl)-N-ethyl-N-propyl-1,4-dioxaspiro[4,5]decane-2-methanamine)] in or on the commodities.

Commodity	Parts per million
Artichoke, globe, import <sup>1</sup> .....	0.7
Asparagus <sup>1</sup> .....	0.05
* * * * *	*
Vegetable, fruiting, crop group 8 <sup>1</sup> .....	1.2

<sup>1</sup> No U.S. registration as of December 1, 2010.

\* \* \* \* \*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 300**

[Docket No. 100507218-0325-02]

**RIN 0648-AY91**

### **International Fisheries; South Pacific Tuna Fisheries; Procedures To Request Licenses and a System To Allocate Licenses**

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to its authority under the South Pacific Tuna Act of 1988 (SPTA), NMFS issues regulations to modify the procedures that U.S. purse seine vessels use to request fishing licenses to fish in areas managed under the SPTA. This rule also establishes a system for allocating licenses in the event more applications are received than there are licenses available. Such an allocation system is needed because the number of applications is approaching the number of available licenses, and may exceed that number. The license allocation system includes objective criteria to be used by NMFS in prioritizing among license applicants. The license application procedures are modified in accordance with the allocation system, and are designed to provide license holders and prospective license applicants with a clear and certain regulatory process. The regulations for vessels licensed under the SPTA are also modified to require that the vessel monitoring system units (VMS units), also known as mobile transmitting units, installed and carried on the vessels are a type that is NMFS-approved.

**DATES:** This final rule is effective January 3, 2011.

**ADDRESSES:** Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR), as well as the proposed rule, are available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>. Those documents are also available from the Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Pacific Islands Regional Office (see contact information above), and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Tom Graham, NMFS, Pacific Islands Regional Office, 808-944-2219.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

This final rule is also accessible at <http://www.gpoaccess.gov/fr>.

##### **Background**

On June 28, 2010, NMFS published a proposed rule in the **Federal Register** (75 FR 36619) that would modify the regulations at 50 CFR part 300, subpart D. Those regulations are issued under the authority of the South Pacific Tuna

Act of 1988 (SPTA) (16 U.S.C. 973-973r), which was enacted to implement the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America and its annexes, schedules, and implementing agreements, as amended ("the Treaty"). The SPTA authorizes the Secretary of Commerce (Secretary), with the concurrence of the Secretary of State and after consultation with the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to issue regulations as may be necessary to carry out the purposes and objectives of the Treaty and the SPTA. The authority to issue regulations has been delegated to NMFS.

The Treaty governs the conduct of U.S. fishing vessel operations in the Treaty Area, as defined at 50 CFR 300.31, and which encompasses approximately 10 million square miles (26 million square kilometers) of the western and central Pacific Ocean (WCPO). The Treaty allows U.S. purse seine vessels access to a large portion of the WCPO by authorizing, and regulating through a licensing system, U.S. purse seine vessels operations within all or part of the exclusive economic zones (EEZs) of the 16 Pacific Island Parties (PIPs) to the Treaty. Licenses to operate in the Licensing Area under the Treaty are issued by the Pacific Islands Forum Fisheries Agency (FFA), based in Honiara, Solomon Islands, which acts as the Treaty Administrator on behalf of the PIPs. Licenses are issued on an annual basis, with the licensing period starting June 15th of each year. U.S. purse seine vessels licensed under the Treaty are used to target skipjack tuna and yellowfin tuna.

Currently, the Treaty allows for a maximum of 45 licenses to U.S. purse seine fishing vessels to fish in the Licensing Area of the Treaty. Of the 45 licenses, 5 are reserved for U.S. vessels engaged in "joint venture" arrangements designed to maximize the benefits generated for the PIPs. The Licensing Area comprises the entire Treaty Area, with the exception of areas subject to the jurisdiction of the United States and areas closed to fishing under the Treaty. It thus includes all or part of the EEZs of the following countries: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

Treaty licenses are issued by the FFA, but license applications for U.S. vessels are first submitted to, and must be approved by, NMFS, on behalf of the Secretary, before being forwarded to the FFA. Under current practices, NMFS ensures that applications are complete, and forwards them to the FFA on a first-come, first-served basis.

Under section 973g of the SPTA, the Secretary may establish a system of allocating Treaty licenses in the event more applications are received than there are licenses available. NMFS is now establishing such a system through this final rule. Section 973g of the SPTA also authorizes the Secretary to establish procedures for vessel operators ("operator" is defined under the SPTA to mean any person who is in charge of, directs, or controls a vessel, including the owner, charterer, and master) to request licenses from the Secretary to fish in the Treaty's Licensing Area. Such procedures have been established by NMFS, on behalf of the Secretary, at 50 CFR 300.32. In order to accommodate the allocation system that this final rule establishes, this rule also modifies the procedures used by applicants to request licenses along with the procedures used by NMFS to process those requests. The modifications to the procedures are designed in part to provide license holders and prospective license applicants with a clear and certain regulatory process.

The proposed rule provides additional background information on the SPTA, the Treaty, and the basis for the proposed regulations. The proposed rule also includes information about an advance notice of proposed rulemaking (ANPR) that was issued on March 28, 2008 (73 FR 16619). The ANPR established a control date of March 28, 2008, for participation in the U.S. purse seine fishery managed under the SPTA (hereafter, "WCPO purse seine fishery"). The control date is the date after which vessel owners and operators attempting to enter the WCPO purse seine fishery are not assured of being granted entry into or future participation in the fishery if all available licenses have been issued, or if NMFS limits the number of available licenses or imposes other management measures in the fishery. The ANPR also solicited comments and input on possible criteria and procedures that NMFS could use to review, order, and process license applications. The public comments made in response to the ANPR are summarized in the proposed rule.

### New Requirements

The main elements of this final rule are described below, starting with the

license application and review procedures, followed by the license allocation system (including transferability provisions), and closing with the VMS-related requirements.

#### *License Application and Review Procedures*

(1) The distinction between joint venture licenses (licenses for fishing activities designed to maximize the benefits generated for the PIPs, of which there are five available) and "general licenses" (the remaining licenses, of which there are 40 available) is clarified, and separate application procedures are established for the two license types.

(2) To obtain approval from NMFS for a joint venture license, in addition to submitting a complete application, as for a general license, an applicant is required to obtain initial approval from the FFA, as Treaty Administrator, as well as documentation from the relevant PIP or PIPs providing concurrence for the issuance of a joint venture license for the vessel. Upon receipt of a complete application for a joint venture license, NMFS will process and approve the application as it would for a general license, except that it will not issue pre-approvals, as described below for general licenses. NMFS will approve applications for joint venture licenses on a first-come, first-served basis, based on the date of initial approval by the FFA.

(3) To provide an opportunity for applicants to receive earlier and greater certainty on the status of their general license applications for a given licensing period, applicants will be allowed to seek and receive pre-approval of their applications. They may do so by submitting expressions of interest earlier than the submission of complete applications. A pre-approval will serve to temporarily reserve an application approval spot until the time that complete applications are due. Whether a pre-approval is issued for a given application will depend on the outcome of the allocation process, described below. Because of time constraints associated with implementing this rule, pre-approvals will not be issued for the 2011–2012 licensing period.

(4) For a given licensing period—with the exception of the 2011–2012 licensing period, for which pre-approvals will not be issued—the due date for submitting expressions of interest for general licenses is June 1st of the year preceding the year in which the licensing period begins. The due date for submitting complete applications for general licenses is

February 5th of the year in which the licensing period begins. Complete applications may be submitted after this date, but they will be considered for approval only if licenses remain available after giving preference to expressions of interest and complete applications that were received by their respective due dates. License approvals for such late applications will be considered on a first-come, first-served basis. Due dates are also established for applications for general licenses that become available after the initial issuance of license approvals.

(5) With the exception of the 2011–2012 licensing period, for which pre-approvals will not be issued, NMFS will pre-approve applications for general licenses by July 16th of the year preceding the year in which the licensing period begins, and notify applicants of its decisions by July 26th of that preceding year. NMFS will approve applications for general licenses by March 7th of the year in which the licensing period begins, and notify applicants of its decisions by March 17th of the same year.

(6) A process to appeal NMFS' pre-approval and approval decisions is established. Appeals will be required to be submitted in writing within 14 days of the notice of NMFS' decision. The initial decision on an appeal will be made by a designee of the NMFS Pacific Islands Regional Administrator within 30 days of the appeal. Within 10 days of notice of the initial decision, the applicant may request a review of the initial decision. The final decision on an appeal will be made by the Assistant Administrator for Fisheries, NOAA, or a designee, within 30 days of the request for review. The final decision will constitute the final administrative action of the Department of Commerce.

(7) Interim procedures are established through these regulations for the 2011–2012 licensing period, as the final rule will not become effective in time for the new procedures to be fully applied for that licensing period. These procedures do not include any provisions regarding pre-approvals. Instead, the application process starts with the February 5, 2011, due date for submitting complete applications.

#### *License Allocation System*

(1) The following criteria will be used to prioritize applicants for general licenses. Based on this prioritization, NMFS will issue pre-approvals for up to 40 applications for general licenses. However, for the 2011–2012 licensing period only, for which NMFS will not issue pre-approvals, NMFS will use

these same prioritization criteria to issue approvals.

First priority will be given to applications for license renewals, but not all renewing applicants will necessarily receive first priority. Specifically, an application will receive first priority if NMFS has approved a license application for that vessel not later than fourteen (14) days prior to the start of the preceding licensing period. Also included in the first priority pool are applications for vessels licensed in the current or previous two licensing periods, but that were lost or were destroyed. In the event that a licensed vessel is lost or destroyed, the applicant will be reserved an approval spot for the licensing period in which the vessel was lost, and for the two subsequent licensing periods, provided that the ownership of the replacement vessel is identical to the ownership of the lost vessel.

Second priority will be given to applicants according to a ranking system in which points are assigned to an applicant as follows: (a) 15 points will be assigned if the vessel has been issued, or will be issued by the time application approvals are issued, in accordance with applicable U.S. Coast Guard regulations, a valid U.S. Coast Guard Certificate of Documentation with a fishery endorsement (among the eligibility criteria for receiving a fishery endorsement are that the vessel must have been built in the United States, and if rebuilt, it must have been rebuilt in the United States); (b) one point will be assigned for each licensing period, starting with the 1988–1989 licensing period, in which a Treaty license has been issued for the vessel, for a total of no more than 10 points; (c) one point will be assigned for each calendar year in which at least 3,000 metric tons of fish were landed or transshipped from the vessel in U.S. ports (including ports located in any of the U.S. States, commonwealths, territories, or possessions) starting in 1988 and ending in the year prior to the year in which the applied-for licensing period starts, for a total of no more than 5 points; and (d) if application of the foregoing criteria results in a tie, priority will be given to the vessel from which the greatest amount of fish, by weight, was landed or transshipped in U.S. ports (including ports located in any of the U.S. States, commonwealths, territories, or possessions) starting in 1988 and ending in the year prior to the year in which the applied-for licensing period starts. If there is still a tie, priority will be given by a lottery conducted by the NMFS Pacific Islands Regional Administrator.

(2) With respect to joint venture licenses, NMFS will not pre-approve applications or prioritize applications using the system established for general licenses. Instead, NMFS will approve joint venture license applications on a first-come, first-served basis, based on the date of initial approval by the FFA.

(3) With respect to the interim procedures that are established for the 2011–2012 licensing period, NMFS will apply the same prioritization system and criteria as it would for subsequent licensing periods, but it will do so only after receiving the complete applications that will be due February 5, 2011.

(4) The final rule clarifies that application approvals from NMFS are not transferable among vessel owners or operators or applicants. It does, however, allow limited transferability of application approvals among vessels. Specifically, if a general or joint venture license has been issued to a vessel, and has been valid for at least 365 consecutive days, and all required fees to the FFA for the vessel have been paid, the vessel operators will be able to request that the license be transferred to a different vessel. Such a transfer will only be allowed if the ownership of the transferee vessel is identical to that of the licensed vessel, and the transferee vessel otherwise meets the requirements for licensing under 50 CFR part 300 and the SPTA.

#### VMS-Related Requirements

This final rule modifies the regulations at 50 CFR 300.45, which relate to the installation, carrying, and operation of VMS units on vessels licensed under the SPTA. Prior to this final rule, the regulations required that the VMS units installed and carried on board vessels consist of hardware and software that are type-approved by the Treaty Administrator. Those requirements were consistent with the terms of the Treaty, which mandates that the VMS units used on licensed vessels be of a type approved by the Treaty Administrator. The regulations are now modified to require that the hardware and software that constitute the VMS units be type-approved by both the Treaty Administrator and NMFS. The purpose of this change is to ensure that the VMS units used on licensed vessels are compatible with, and meet the technical standards of, the vessel monitoring system administered by NMFS, as well as the vessel monitoring system administered by the Treaty Administrator.

NMFS publishes separately lists of the VMS units that it has type-approved. The current type-approval lists can be

obtained from the NOAA Office of Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910; by telephone at 888–210–9288; or by fax at 301–427–0049.

#### Comments and Responses

NMFS received one public comment on the proposed rule. It is summarized below, followed by a response from NMFS.

*Comment:* The regulations should have an allowance for a vessel owner to submit a complete license application after the February 5th deadline and to be able to receive a license if the allowable number of licenses has not been allocated to vessels that met the February 5th deadline. This procedure provides a process for the allocation of licenses up to the limit allowed under the treaty. Freezing the number of licenses to those submitted only by the February 5th deadline could cause a restriction to a level below the allowed limit, and it could take away an opportunity or opportunities for allocating licenses to owners who were not in a position to submit a complete application by the February 5th deadline.

*Response:* The commenter is correct that as written, the proposed rule would not allow a prospective license holder to receive a license if the application is received by NMFS after the specified due dates, even if a license is available. NMFS agrees that such a system could effectively limit the number of available licenses in any given licensing period to fewer than the number allowed under the Treaty, and thereby may unduly restrict opportunities to participate in the fishery. Consequently, the licensing procedures of the final rule have been clarified to allow an applicant to apply for a license for a given licensing period at any time up to May 15th within the licensing period (*i.e.*, 30 days before the end of the licensing period). That is, in order to be assured that an application will be considered for approval, a complete application must still be received by NMFS by the due date specified in this final rule. However, NMFS will consider for approval all applications received after the applicable due date established in this final rule if and as long as licenses remain available. Such applications will be considered on a first-come, first-served basis, based on the day of receipt. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery.

### Changes From the Proposed Rule

As described above in NMFS' response to the public comment on the proposed rule, changes have been made in this final rule in order to provide for application approvals to be issued for "late applications" (*i.e.*, applications submitted after the due dates used for the purpose of allocating application approvals in the event that more applications are received than there are licenses available). The change allows NMFS to approve such "late applications" on a first-come, first-served basis, and only after giving preference to applicants that submitted their applications within the due dates, and only in the event that licenses remain available after the expiration of the application approval deadline.

Specifically, clarifications have been made to paragraphs (h) and (k) of § 300.32 to provide that an application submitted as late as May 15th within a given licensing period may be considered for approval if there are licenses remaining. However, in order to be considered for approval in the event that more applications are received than there are licenses available, the complete application must be received by NMFS by February 5th of the year in which the licensing period begins, or, in the case of the license approval becoming available after the initial issuance of approvals, at a specified later date. Paragraph (k) of § 300.32 has been clarified to provide for NMFS to consider "late applications" received no later than May 15th within the licensing period for approval on a first-come, first-served basis, and only after giving preference to expressions of interest and complete applications that were received within their respective due dates. Paragraph (k) of § 300.32 goes on to state that in the event that two or more "late applications" are received on the same day, priority will be given by lottery, which will be conducted by the NMFS Pacific Islands Regional Administrator.

A correction was made to the criteria specified in paragraph (k) of § 300.32 that would be used to determine first priority for pre-approvals. Under the proposed rule, first priority would be given to applications for vessels with valid licenses as of June 1st of the year preceding the year in which the subject licensing period begins; that is, to vessels with licenses for the licensing period two periods previous to the subject licensing period. However, an unintended effect of this lag is that a vessel that enters the fishery for the first time in the 2011–2012 licensing period would not receive first priority (*i.e.*, as

a license renewal) for the 2012–2013 licensing period. Consequently, a correction was made to paragraph (k)(4)(i) of § 300.32 such that first priority for pre-approvals for a given licensing period will be given to vessels for which, as of June 1st of the year preceding the year in which the subject licensing period begins, application approvals have been issued by NMFS for the licensing period that precedes the subject licensing period. Because paragraph (n) of § 300.32, which specifies exceptional procedures to be used for the 2011–2012 licensing period, makes reference to paragraph (k)(4)(i) of § 300.32, appropriate technical corrections have been made to paragraph (n) of § 300.32 so that its meaning does not change. Specifically, it now states that for the 2011–2012 licensing period only, first priority will be given to vessels that, as of February 5, 2011, have valid licenses for the 2010–2011 licensing period.

A change has been made to the definition of "Regional Administrator" in § 300.31; the definition now includes a facsimile number that may be used for the purpose of submitting information and materials required under 50 CFR part 300, subpart D.

In addition to the substantive changes described above, a number of minor changes have been made in the regulations in order to clarify their meaning.

### Classification

The NOAA Assistant Administrator for Fisheries has determined that this final rule is consistent with the SPTA and other applicable laws.

### Executive Order 12866

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

### Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments disputing the basis for this certification.

### Paperwork Reduction Act

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB)

under control number 0648–0218. Public reporting burden for this collection of information, called "South Pacific Tuna Act," is estimated to average: (a) For the optional expressions of interest in vessel licenses, 15 minutes per response for license renewals and 120 minutes per response for initial licenses (with one optional response per year); (b) for the license application forms, 60 minutes per response (with one response per year); (c) for the FFA Regional Register applications/VMS registration forms, 45 minutes per response (with 1 response per year); (d) for the catch report forms, 60 minutes per response (with 5 responses per year); and (e) for the unloading logsheet, 30 minutes per response (with 6 responses per year). These estimates include the 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 these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see ADDRESSES*) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

### List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 26, 2010.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

### PART 300—INTERNATIONAL FISHERIES REGULATIONS

#### Subpart D—South Pacific Tuna Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart D continues to read as follows:

**Authority:** 16 U.S.C. 973–973r.

■ 2. In § 300.31, the definitions for "Regional Administrator" and "Vessel Monitoring System Unit or VMS unit"

are revised and a new definition for "State" is added, to read as follows:

**§ 300.31 Definitions.**

\* \* \* \* \*

*Regional Administrator* means the Regional Administrator, Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, facsimile: 808-973-2941, or a designee.

*State* means each of the several States of the United States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

\* \* \* \* \*

*Vessel Monitoring System Unit or VMS unit*, sometimes known as a "mobile transmitting unit," means Administrator-approved and NMFS-approved VMS unit hardware and software that is installed on a vessel pursuant to § 300.45. The VMS units are a component of the regional vessel monitoring system administered by the FFA, as well as of the vessel monitoring system administered by NMFS, and as such are used to transmit information between the vessel and the Administrator and NMFS and/or other reporting points designated by NMFS.

■ 3. § 300.32 is revised to read as follows:

**§ 300.32 Vessel licenses.**

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless exempted by § 300.39. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a copy or facsimile thereof must be carried on board the vessel when in the Licensing Area or Closed Areas, and must be produced at the request of authorized officers, authorized party officers, or authorized inspectors. A vessel may be used to fish in the Licensing Area if the license has been issued but not yet received, provided that the license number is available on board.

(c) The total number of licenses that may be issued and valid at any point in time is 45, five of which shall be reserved for fishing vessels of the United States engaged in joint venture arrangements.

(1) For the purpose of this section, the licenses reserved for vessels engaged in joint venture arrangements are referred to as "joint venture licenses," and the remaining licenses are referred to as "general licenses."

(2) A joint venture arrangement is one in which the subject vessel and its operators are engaged in fishing-related activities designed to maximize the benefits generated for the Pacific Island Parties from the operations of fishing vessels licensed pursuant to the Treaty, as determined by the Administrator. Such activities can include the use of canning, transshipment, vessel slipping and repair facilities located in the Pacific Island Parties; the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island Parties; and the employment of nationals of the Pacific Island Parties on board such vessels.

(d) Licenses are issued by the Administrator. The Administrator will issue licenses only for applications that have been approved by the Regional Administrator. The Regional Administrator's approval is indicated by the signature of the Regional Administrator on the part of the application form labeled "Schedule 1." Upon approval by the Regional Administrator of a license application, the complete application will be forwarded to the Administrator for consideration. Except as provided in paragraph (n) of this section, prior to approving license applications for a given licensing period, the Regional Administrator will issue pre-approvals of license applications that serve the purpose of temporarily reserving approvals up until the time complete applications are due to be received by the Regional Administrator.

(e) The Regional Administrator, in his or her sole discretion, may approve fewer license applications than there are licenses available for any given licensing period or at any given time.

(f) A pre-approval or approval issued by the Regional Administrator pursuant to this section:

(1) Shall not confer any right of compensation to the recipient of such pre-approval or approval;

(2) Shall not create, or be construed to create, any right, title, or interest in or to a license or any fish; and

(3) Shall be considered a grant of permission to the recipient of the pre-approval or approval to proceed with the process of seeking a license from the Administrator.

(g) A pre-approval or approval issued by the Regional Administrator pursuant to this section is subject to being rescinded at any time if the Regional Administrator determines that an administrative error has been made in its granting, false information has been provided by the applicant, circumstances have changed such that the information provided by the

applicant is no longer accurate, true or valid, or if the applicant or vessel no longer meets the requirements for licensing under this subpart or under the Act or other applicable law. NMFS will notify the applicant of its rescission of a pre-approval or approval within 14 days of the rescission. In the event that the Regional Administrator rescinds an approval after the license has been issued, NMFS will notify the Administrator of such, and request that the Administrator immediately revoke the license.

(h) *Application process for general licenses.*

(1) A vessel operator who satisfies the requirements for licensing under the Act and under this subpart may apply for a general license.

(2) In order for a general license to be issued for a vessel, an applicant must submit a complete application to, and obtain an application approval from, the Regional Administrator.

(3) Except for the 2011–2012 licensing period, prior to submitting a complete application, an applicant may request pre-approval of an application by the Regional Administrator by submitting an expression of interest. A pre-approval of an application establishes that the applicant is eligible to be considered for one of the available licenses following timely submission of a complete application. Although submission of an expression of interest is entirely voluntary, applications that have not been pre-approved might not be eligible for approval if the number of applications exceeds the number of available licenses for a given licensing period. A pre-approval will be deemed to be void if the applicant fails to submit a complete application by the date established in paragraph (h)(6) of this section.

(4) Except as provided in paragraph (n) of this section, in order to obtain a pre-approval for a given licensing period, either an expression of interest or a complete application must be submitted to and received by the Regional Administrator no later than June 1st of the year preceding the year in which the licensing period begins.

(5) An expression of interest must include the information listed below, which may be submitted by electronic or hard-copy correspondence following instructions provided by the Regional Administrator.

(i) If the expression of interest is for a vessel for which, as of the June 1st due date for submitting such expression of interest, NMFS has issued an application approval for the licensing period that starts that year (i.e., a

renewal of the license is being sought), the expression of interest shall include:

(A) The licensing period for which the license is being sought.

(B) The current name, IRCS, and annual USCG Certificate of Documentation number of the vessel.

(ii) For all other expressions of interest that do not meet the criteria in paragraph (h)(5)(i) of this section, the expression of interest shall include:

(A) The licensing period for which the license is being sought.

(B) The full name and address of each person who is, or who is anticipated to be, an operator of the vessel for which a license is sought, and for each such person, a statement of whether the person is, or is anticipated to be, owner, charterer, and/or master of the vessel.

(C) A statement of whether or not the vessel to be licensed is known, and if it is known, the current name, IRCS, and annual USCG Certificate of Documentation number, if any, of the vessel.

(D) A copy of the vessel's current USCG Certificate of Documentation. If the vessel has not been issued such a document, then a statement of whether application has been or will be made for a USCG Certificate of Documentation, including identification of all endorsements sought in such application.

(E) If the vessel is known, a list of the licensing periods, if any, during which a license for the vessel was issued under this section.

(F) If the vessel is known, a statement of the total amount, in metric tons, of any tuna species landed or transshipped from the vessel at United States ports, including ports located in any of the States, for each of the calendar years 1988 through the current year.

(6) A complete application for a given licensing period may be submitted to the Regional Administrator at any time up to May 15th within the licensing period, but in order to be considered for approval in the event that more applications are received by the Regional Administrator than there are licenses available, a complete application must be received by the Regional Administrator as follows:

(i) No later than February 5th of the year in which the licensing period begins; or

(ii) If a pre-approval of the application was issued in accordance with paragraphs (k)(8) or (k)(9) of this section, not later than the date specified by NMFS in the notification of such pre-approval (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval).

(7) License application forms, which include the "Schedule 1" form and the FFA Vessel Register application form, are available from the Regional Administrator. The complete application must be received by the Regional Administrator as specified in paragraph (h)(6) of this section. An application shall not be complete, and shall not be subject to processing, unless it contains all of the information specified on the "Schedule 1" form and all the items listed in paragraphs (h)(7)(i) through (h)(7)(x) of this section, as follows:

(i) The licensing period for which the license is requested.

(ii) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty.

(iii) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance.

(iv) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, a statement that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines.

(v) A copy of the vessel's current annual USCG Certificate of Documentation.

(vi) Electronic versions of full color photographs of the vessel in its current form and appearance, including a bow-to-stern side-view photograph of the vessel that clearly and legibly shows the vessel markings, and a photograph of every area of the vessel that is marked with the IRCS assigned to the vessel.

(vii) A schematic stowage/well plan for the vessel.

(viii) A copy of the VMS unit installation certificate, issued by the Administrator-authorized person who installed the VMS unit, for the VMS unit installed on the vessel in accordance with § 300.45.

(ix) An FFA Vessel Register application form that includes all the applicable information specified in the form.

(x) In the case of an application for a vessel that does not meet the criteria in paragraph (h)(5)(i) of this section, any information under paragraph (h)(5)(ii) of this section that has not already been provided or that has changed since it was previously submitted.

(i) *Application process for joint venture licenses.*

(1) A vessel operator who satisfies the requirements for licensing under the Act

and under this subpart may apply for a joint venture license.

(2) The applicant, in coordination with one or more Pacific Island Parties, shall contact the Administrator to determine the specific information and documents that are required by the Administrator in order to obtain an initial approval from the Administrator for a joint venture license. The applicant shall submit such required information and documents directly to the Administrator. Once an initial approval is obtained from the Administrator, the applicant shall submit a complete application package, as described in paragraph (h)(7) of this section, to the Regional Administrator, along with dated documentation of the Administrator's initial approval, and a letter or other documentation from the relevant national authority or authorities of the Pacific Island Party or Parties identifying the joint venture partner or partners and indicating the Party's or Parties' approval of the joint venture arrangement and its or their concurrence that a joint venture license may be issued for the vessel.

(j) *Appeals.*

(1) *Eligibility.* Any applicant who is denied a pre-approval or an approval under this section may appeal the denial. The appeal must be made in writing and must clearly state the basis for the appeal and the nature of the relief that is requested. The appeal must be received by the Regional Administrator not later than 14 days after the date that the notice of denial is postmarked.

(2) *Appeal review.* Upon receipt of an appeal, the Regional Administrator will appoint a designee who will review the basis of the appeal and issue an initial written decision. The written decision will be mailed to the applicant within 30 days of receipt of the appeal. If the appellant does not request a review within 10 days of mailing of the initial decision, the initial decision is the final administrative action of the Department of Commerce. If, within 10 days of mailing of the initial decision, the Regional Administrator receives from the appellant a written request for review of the initial decision, the Assistant Administrator or a designee will review the basis of the appeal and issue a final written decision. The final decision will be made within 30 days of receipt of the request for review of the initial decision. The decision of the Assistant Administrator or designee constitutes the final administrative action of the Department of Commerce.

(k) *Procedures used by the Secretary to review and process applications for general licenses.* The procedures in this

paragraph apply to the process used by NMFS, on behalf of the Secretary and in consultation with the Secretary of State, to review expressions of interest and complete applications, and to approve applications. For the purpose of this section, NMFS' approval of an application means the signing by the Regional Administrator of the "Schedule 1" part of the application form, indicating that the application is complete and that it meets the requirements of the Act and of this subpart for forwarding to the Administrator. For the purpose of this section, NMFS' pre-approval of an application means that the Regional Administrator has initially determined that the applicant is eligible for a general license, but that the application has not yet been approved for forwarding to the Administrator.

(1) NMFS will pre-approve no more applications for a given licensing period than there are licenses available for that licensing period. A pre-approval will be deemed to be void if the applicant fails to submit a complete application by the date established in paragraph (h)(6) of this section.

(2) NMFS will approve no more applications for a given licensing period than there are licenses available for that licensing period.

(3) NMFS will not approve a license application if it determines that:

- (i) The application is not in accord with the Treaty, Act, or regulations;
- (ii) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;
- (iii) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or
- (iv) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.

(4) Except as provided in paragraph (n) of this section, no later than July 16th of each year, NMFS will pre-approve applications from among the expressions of interest and complete applications that were received by June 1st of the current year for the licensing period that starts the following year as provided in this paragraph. If the number of expressions of interest and complete applications does not exceed the number of licenses available, all

applications that meet the requirements of paragraphs (h)(4) and (h)(5) of this section and that satisfy the relevant requirements for licensing under the Act and this subpart will be pre-approved. If the number of expressions of interest and complete applications exceeds the number of licenses available, those that meet the requirements of paragraphs (h)(4) and (h)(5) of this section and that satisfy the relevant requirements for licensing under the Act and this subpart will be prioritized for pre-approval as follows:

(i) First priority will be given to expressions of interest and complete applications for vessels for which, as of June 1st of that year, application approvals have been issued by NMFS for the licensing period that starts that year (*i.e.*, anticipated license renewal applications), provided that such vessels continue to satisfy the requirements for licensing under the Act and this subpart, and provided such vessels have no unsatisfied civil penalties or fines assessed by the Secretary under the Act that have become final.

(ii) Second priority will be given to expressions of interest and complete applications scored using the following system, in descending order of the sum of the points assigned:

(A) 15 points will be assigned for a vessel that has been issued, or will be issued by the date complete applications are due to be received by the Regional Administrator under paragraph (h)(6) of this section, a valid USCG Certificate of Documentation with a fishery endorsement.

(B) 1 point will be assigned for each licensing period, starting with the 1988–1989 licensing period, in which a license had been issued for the vessel pursuant to the Act, for a total of no more than 10 points.

(C) 1 point will be assigned for each calendar year in which at least 3,000 metric tons of fish were landed or transshipped from the vessel in United States ports, including ports located in any of the States, as determined by the Regional Administrator. The applicable period shall run from 1988 through the last calendar year prior to the year in which the applied-for licensing period starts, and the total number of points assigned shall be no more than 5.

(D) In the event that two or more vessels receive the same sum number of points under paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(C) of this section, priority will be given to the vessel from which the greatest amount of fish, by weight, was landed or transshipped in United States ports, including ports located in any of the States, starting in

calendar year 1988 and ending in the year prior to the year in which the applied-for licensing period starts, as determined by the Regional Administrator. In the event that that does not resolve the tie, priority will be given by lottery, which will be conducted by the Regional Administrator.

(5) Except as provided in paragraph (n) of this section, no later than July 26th of each year, NMFS will send notifications by mail to all applicants that submitted expressions of interest or complete applications by June 1st of that year, indicating whether their applications (for the licensing period that starts the following year) have been pre-approved.

(6) No later than March 7th of each year, NMFS will approve applications (for the licensing period that starts that year) that satisfy all of the following conditions:

- (i) The application was pre-approved;
- (ii) The information associated with the application has not changed since the point of pre-approval in a way such that pre-approval would not have been made using the updated information;
- (iii) The complete application was received by February 5th of the same year; and
- (iv) The applicant satisfies the requirements for licensing under the Act and this subpart.

(7) No later than March 17th of each year, NMFS will notify all applicants (for the licensing period that starts that year) who submitted complete applications by February 5th of that year, whether their applications have been approved under paragraph (k)(6) of this section, and in cases where they have not, whether their applications are being considered for approval under paragraph (k)(8) of this section.

(8) In the event that additional licenses for a given licensing period are available after issuing the approvals under paragraph (k)(6) of this section, NMFS will, after final administrative action by the Department of Commerce on any appeals made under paragraph (j) of this section, do the following:

- (i) If the number of outstanding expressions of interest (*i.e.*, expressions of interest that have not been pre-approved) received by June 1st of the year preceding the year in which the licensing period begins, plus the number of outstanding complete applications (*i.e.*, complete applications that have not been approved) received by February 5th of the year in which the licensing period begins, exceeds the number of licenses available, NMFS will review all such outstanding expressions of interest and complete applications



and apply the process described in paragraphs (k)(9)(i)(A) through (k)(9)(i)(C) of this section to pre-approve and approve applications from among that pool of applicants;

(ii) If the number of outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins, plus the number of outstanding complete applications received by February 5th of the year in which the licensing period begins, does not exceed the number of licenses available:

(A) No later than June 15th of the year in which the licensing period begins, NMFS will pre-approve all such outstanding expressions of interest and complete applications that satisfy the relevant requirements for licensing under the Act and this subpart;

(B) No later than June 25th of the year in which the licensing period begins, NMFS will notify all such outstanding applicants of the pre-approvals, and for those applicants that submitted expressions of interest but not complete applications, also notify them of the date by which a complete application must be received in order to be issued an application approval (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval);

(C) NMFS will review all complete applications received by the required date from applicants pre-approved under paragraph (8)(ii)(A) of this section, and within 30 days of such receipt, approve the application, if and as appropriate and if the applicant satisfies the requirements for licensing under the Act and this subpart; and

(D) If and as long as the number of approvals plus outstanding (not voided) pre-approvals does not exceed the total number of licenses available under paragraph (c) of this section, NMFS will review all complete applications received after February 5th of the year in which the licensing period begins and before May 16th within the licensing period and, as they are received and in the order they are received (based on the day of receipt), will approve those applications that satisfy the requirements for licensing under the Act and this subpart until no more approvals are available. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery, which will be conducted by the Regional Administrator.

(iii) Within 10 days of approving an application, NMFS will notify the applicant.

(9) If a license or application approval that has been issued for a given

licensing period becomes available before or during that licensing period, NMFS will do the following:

(i) If there are any outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins or outstanding complete applications received by February 5th of the year in which the licensing period begins, NMFS will review all such outstanding expressions of interest and complete applications and pre-approve and approve applications for that license from among that pool as follows:

(A) Within 45 days of NMFS becoming aware of the availability of the license, NMFS will pre-approve an application using the prioritization criteria and point-assigning system described in paragraphs (k)(4)(i) and (k)(4)(ii) of this section;

(B) Within 55 days of NMFS becoming aware of the availability of the license NMFS will notify all active applicants as to whether their applications have been pre-approved, and for those applications that have been pre-approved, notify each applicant of the date by which a complete application, if not already received, must be received (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval); and

(C) Within 30 days of receiving a complete application that had been pre-approved, NMFS will approve the application, if and as appropriate and if the applicant satisfies the requirements of this subpart.

(ii) If there are no outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins and no outstanding complete applications received by February 5th of the year in which the licensing period begins, if and as long as the number of approvals plus outstanding (not voided) pre-approvals does not exceed the number of licenses available, NMFS will review all complete applications received after February 5th of the year in which the licensing period begins and before May 16th within the licensing period and, in the order they are received (based on the day of receipt), will approve those applications that satisfy the requirements for licensing under the Act and this subpart until no more approvals are available. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery, which will be conducted by the Regional Administrator.

(iii) Within 10 days of approving an application, NMFS will notify the applicant.

(l) *Procedures used by the Secretary to review and process applications for joint venture licenses.* NMFS, on behalf of the Secretary and in consultation with the Secretary of State, will review and approve applications for joint venture licenses as described in paragraph (k) of this section for general licenses, except that NMFS will not consider expressions of interest for joint venture licenses or pre-approve applications for joint venture licenses. In the event that NMFS receives for a given licensing period more applications for joint venture licenses than there are licenses available, it will approve the applications in the chronological order that the Administrator has provided its initial approval.

(m) *Transferability of application approvals.* Application approvals from NMFS are not transferable among vessel owners or operators or license applicants. Application approvals are transferable among vessels, subject to the following requirements:

(1) A vessel operator may seek to transfer a general or joint venture license to another vessel that meets the requirements for licensing under this subpart and the Act, only if the license has been valid for the vessel for at least 365 consecutive days and all the fees required by the Administrator for the current licensing period have been paid to the Administrator. The vessel operator may seek to transfer the license by submitting a written request to the Regional Administrator along with a complete application for the other vessel as described in paragraph (h)(7) of this section. Any such transfer may be subject to additional fees for the registration of the vessel on the FFA Vessel Register, as specified in paragraph (b) of § 300.45.

(2) Upon receipt of a request and complete application under paragraph (m)(1) of this section, the Regional Administrator, after determining that all the fees required for the vessel by the Administrator for the current licensing period have been paid, that the ownership of the licensed vessel and the ownership of the vessel to which the application approval would be transferred are identical, and that the transferee vessel meets the requirements for licensing under this subpart and the Act, will approve the application and notify the applicant of such within 10 days of the determination.

(3) If a licensed vessel is lost or destroyed, and the operators of the vessel apply for a license for another vessel for the licensing period during



which the vessel was lost, or for either of the two subsequent licensing periods, NMFS will consider the replacement vessel to have the license application approval status and history of the lost or destroyed vessel for the purpose of applying the prioritization criteria of paragraph (k)(4) of this section, provided that the ownership of the lost or destroyed vessel and the ownership of the replacement vessel, as determined by the Regional Administrator, are identical, and the replacement vessel meets the requirements for licensing under this subpart and the Act.

(n) *Procedures for 2011–2012 licensing period.* For the licensing period that starts June 15, 2011, and for that licensing period only, pre-approvals may not be sought and will not be issued by NMFS. NMFS will rank order those applications received by February 5, 2011, for the 2011–2012 licensing period by applying the criteria in paragraphs (k)(4)(i) and (k)(4)(ii) of this section, except that in lieu of using the criteria in (k)(4)(i), first priority will be given to applications for vessels that as of February 5, 2011, have valid licenses for the 2010–2011 licensing period.

■ 4. In § 300.45, paragraph (d) is revised to read as follows:

**§ 300.45 Vessel monitoring system.**

\* \* \* \* \*

(d) *Hardware and software specifications.* The VMS unit installed and carried on board a vessel to comply with the requirements of this section must consist of hardware and software that is approved by the Administrator and approved by NMFS. A current list of hardware and software approved by the Administrator may be obtained from the Administrator. A current list of hardware and software approved by NMFS may be obtained from NMFS.

\* \* \* \* \*

[FR Doc. 2010–30240 Filed 11–30–10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 100510220–0581–04]

RIN 0648–AY90

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Emergency Fisheries Closure in the Gulf of Mexico Due to the Deepwater Horizon MC252 Oil Spill; Amendment 3

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

**ACTION:** Temporary emergency rule; amendment; request for comments.

**SUMMARY:** NMFS issues this temporary rule to revise the existing procedures for closing and reopening areas of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) for the royal red component of the Gulf shrimp fishery in response to a fishery interaction of the Gulf shrimp fishery with oil or oil byproducts from the Deepwater Horizon MC252 oil spill. The revisions to the procedures for closing and reopening allow for timely adjustment to the spatial and temporal scale of closed areas to fishing for royal red shrimp in response to new information regarding a fishery interaction with the Gulf shrimp fishery with sub-surface oil and oil byproducts. To facilitate timely notice to the public of such closures, the closed portions of Federal waters will be updated on a regular basis and announced to the public via NOAA Weather Radio, Fishery Bulletin, and NOAA Web site updates, or the public may obtain the information by calling the Deepwater MC252 Oil Spill Hotline at 800–627–6622. The action being taken pursuant to this temporary rule is to prohibit royal red shrimp fishing in a specific area of the Gulf in response to a known interaction of this component of the shrimp fishery with sub-surface oil and oil byproducts. This temporary rule would remain in effect for 10 days, unless superseded by subsequent rulemaking. The intended effect of this temporary rule is to promote seafood safety and consumer confidence in seafood products.

**DATES:** This rule is effective November 26, 2010 through December 4, 2010, unless superseded by subsequent rulemaking. Comments may be submitted by December 24, 2010.

**ADDRESSES:** You may submit comments on this rule, identified by “0648–AY90” by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- *Fax:* 727–824–5308; Attention: Anik Clemens.
- *Mail:* Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* No comments will be posted for public viewing until after the comment period. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA–NMFS–2010–0244” in the keyword search, then select “Send a Comment or Submission.” NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the environmental assessment, signed on June 17, 2010, may be obtained from Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505; telephone: 727–824–5305; e-mail: [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Anik Clemens, telephone: 727–824–5305, fax: 727–824–5308; e-mail: [anik.clemens@noaa.gov](mailto:anik.clemens@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides the legal authority for the promulgation of emergency regulations under section 305(c).

#### Background

NMFS responded to the April 20, 2010 Deepwater Horizon MC252 oil spill by closing a portion of the Gulf EEZ to all fishing through an emergency rule effective May 2, 2010 (75 FR 24822, May 6, 2010). Oil continued to leak from the Deepwater Horizon MC252 site and the spatial and temporal location of the oil in the Gulf EEZ continued to change. NMFS revised the closed area in a second emergency rule that became