

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Boeing:** Docket No. FAA-2009-0288; Directorate Identifier 2008-NM-214-AD.

#### Comments Due Date

(a) We must receive comments by May 22, 2009.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 737-600, -700, -700C, -800, -900 and -900ER series airplanes, certificated in any category, as identified in Boeing Special Attention

Service Bulletin 737-57-1293, dated November 13, 2008.

#### Unsafe Condition

(d) This AD results from a report received of leaking fuel from the wing leading edge area at the inboard end of the number 5 leading edge slat. We are issuing this AD to prevent flammable fluids from accumulating in the wing leading edge and draining inboard and onto the engine exhaust nozzle, which could result in a fire.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Corrective Actions

(f) Within 24 months after the effective date of this AD, modify the fluid drain path in the wing leading edge area, forward of the wing front spar, and do all applicable related investigative and corrective actions, by accomplishing all applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-57-1293, dated November 13, 2008. Do all applicable related investigative and corrective actions before further flight.

#### Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sam Spitzer, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6510; fax (425) 917-6590.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on March 12, 2009.

#### Ali Bahrami,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-7769 Filed 4-6-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 080304370-9128-01]

RIN 0648-AW52

### Fisheries in the Western Pacific; Compensation to Commercial Bottomfish and Lobster Fishermen due to Fishery Closures in the Papahānaumokuākea Marine National Monument, Northwestern Hawaiian Islands

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

**ACTION:** Proposed rule; request for public comments.

**SUMMARY:** The Consolidated Appropriations Act, 2008, authorizes the Secretary of Commerce (Secretary), through NMFS, to provide monetary compensation to eligible Northwestern Hawaiian Islands (NWHI) commercial lobster permit holders who were, and commercial bottomfish permit holders who will be, displaced by fishery closures resulting from establishment of the Papahānaumokuākea Marine National Monument (Monument) in the NWHI. This proposed rule describes and seeks public comment on a permit compensation proposal, which identifies eligible permit holders and describes the permit valuation methodology. Holders of NWHI commercial Federal bottomfish and lobster permits who voluntarily accept monetary compensation would be required to surrender their permits and leave the fisheries.

**DATES:** Comments must be received by May 4, 2009.

**ADDRESSES:** You may submit comments on the proposed rule, identified by 0648-AW52, by either of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://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](http://www.regulations.gov) without change. All personal identifying information (for example, 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 for publication and response, as appropriate (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.

A regulatory impact review (RIR) that describes in more detail the permit valuation methodology, and an environmental assessment (EA) that analyzes the potential impacts of the proposed rule on the environment, are available from William L. Robinson (see **ADDRESSES**) and [www.regulations.gov](http://www.regulations.gov). An initial regulatory flexibility analysis (IRFA) is found in the section below.

**FOR FURTHER INFORMATION CONTACT:** Toby Wood, Sustainable Fisheries Division, NMFS PIR, 808-944-2234.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This proposed rule is also accessible on the World Wide Web at [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr).

**Background**

On December 26, 2007, the President signed Public Law 110-161, the Consolidated Appropriations Act of 2008. The Act authorizes the Secretary to provide a mechanism for compensating bottomfish and lobster fishermen who were impacted as a result of the creation of the Monument on June 15, 2006 (Proclamation 8031, 71 FR 3644, June 26, 2006, as amended by Proclamation 8112, 72 FR 10031, March 6, 2007). Final regulations governing the Monument require that any commercial lobster fishing permit be subject to a zero annual harvest limit. Those regulations permanently closed the NWHI lobster fishery. The NWHI commercial bottomfish fishery is allowed to operate until June 15, 2011, when it will be closed permanently (see 71 FR 51134, August 29, 2006, and 50

CFR 404.10). Funding is authorized to develop and implement a program to compensate eligible persons who held valid commercial Federal NWHI bottomfish and lobster permits at the time the Monument was created. The Act appropriates \$6,697,500 and directs the Secretary to promulgate rulemaking for a voluntary capacity reduction program that does the following:

(1) Identifies eligible NWHI bottomfish and lobster fishery permit holders affected by the establishment of the Monument;

(2) Provides a mechanism to compensate eligible permit holders for no more than the economic value of their permits; and

(3) In addition to the permit compensation provided under subparagraph (2) above, provides an optional funding mechanism whereby eligible participants may choose to receive additional compensation based on the value of their fishing vessel and gear, provided such vessels and gear will no longer be used for fishing.

This proposed rule would identify eligible permit holders and establish a process for voluntary permit compensation. A voluntary vessel buyout program is contingent on the availability of funds following the permit compensation, and NMFS does not propose to carry out this optional mechanism until after the initial permit compensation is complete. If funds are available, NMFS would publish a separate proposed rule that describes and seeks public comment on a vessel and gear buyout program.

**Eligible Participants**

The Act defines "eligible participants" as individuals holding commercial Federal fishing permits for either lobster or bottomfish in the designated waters within the Monument, at the time the Monument was established on June 15, 2006. NMFS has preliminarily identified eligible participants as holders of eight valid commercial Federal permits for bottomfish, and holders of 15 valid

commercial Federal permits for lobster. NMFS is not authorized to provide compensation to any persons not meeting the definition of "eligible participants" under the program described in this proposed rule. As a condition of participation in the proposed program, eligible permit holders who voluntarily accept and receive permit compensation must immediately surrender their NWHI fishing permit to NMFS and agree to relinquish any claim associated with each permit.

**Proposed NWHI Permit Compensation Methodology**

NMFS proposes to determine the economic value of NWHI lobster and bottomfish Federal commercial fishing permits by using a proxy for the Net Present Value (NPV) of the permit that uses imputed (estimated) values in the absence of a documented market for the permits. NPV is commonly used in cash flow analyses to identify, evaluate, and compare the value of a particular investment. The components of the NPV calculation include (1) an initial base value, often revenue, for one or more years of fishing, (2) a discount rate to adjust the base value for the value of future earnings, and (3) the time period over which the base value will be discounted. For both lobster and bottomfish permits, NMFS proposes to use a discount rate of 2.7 percent (the real interest rate for a Treasury bond as prescribed by Office of Management and Budget, Circular A-4, Appendix C, revised January 2008

([www.whitehouse.gov/omb/circulars/a094/a94\\_appx-c.html](http://www.whitehouse.gov/omb/circulars/a094/a94_appx-c.html)) over a period of 30 years. This 30-yr period is based on the approximate life of a typical fishing vessel and the *de facto* reality that discounting outside a 30-yr time horizon returns low values. It is also the typical period of tax table depreciation, and is a standard time horizon for capital asset budgeting.

The NPV formula accounts for the flow of the valuation variable over an agreed time period:

$$NPV = (\text{income\_to\_permit\_holder}) \sum_{i=1}^N (1 + \lambda)^{-i}$$

where  $i$  is the year index,  $N$  is the length of the evaluation period, *income to permit holder* is the proxy for net revenue, and  $\lambda$  is the discount rate over the evaluation period. Because the discount rate is positive, the discounted

NPV will necessarily be less than the total of individual payments were NMFS to propose making annual partial payments over the 30-year period.

The proxy for NPV of net revenue is a multiple of annual gross revenue

based on a variety of separate investigations of these relationships (which are not precise, but in which gross revenue has the benefit of being more transparent, within the constraints

of Federal confidentiality statutes, and straightforward to calculate).

While NMFS proposes to use standard NPV methodology to determine the economic value of commercial fishing permits in both the lobster and bottomfish fisheries, NMFS proposes two distinctly different time periods for the determination of the base value. NMFS proposes that this time period be the three consecutive years in which each fishery operated immediately prior to the designation of the Monument. These time periods are different for each fishery in recognition of different operational and historical circumstances of each fishery.

#### *Bottomfish*

NWHI bottomfish permits were/are not transferable, so there was no established market on which to determine their value. Thus, NMFS proposes to determine the economic value of each of the eight Federal bottomfish permits individually using the base value time period of 2003–05. That is, the NPV of each permit, individually, would reflect the average ex–vessel net revenue, calculated as the ex–vessel gross revenue proxy times a multiplier of approximately 2.5 that considers the discount rate, determined by NMFS examination of documented records for the 2003–05 time period. Thus, the economic value of each permit, and the NMFS compensation offer, will be different for each of the eight permit holders, based on the 2003–05 fishing record associated with each permit (i.e., the average individual ex–vessel gross revenue for 2003–05 multiplied by approximately 2.5). All imputed values will be updated to current dollar figures based on Consumer Price Indices.

#### *Lobster*

NWHI lobster permits were/are transferable, so it is theoretically possible to consider market exchange values were they available to NMFS. However, this would likely be problematic for several reasons. The NWHI lobster permit market is small, unmonitored, and has been largely inactive over the past eight years. In the later years of operation, the lobster fishery was undergoing operational changes including the formation of a cooperative to manage fishing capacity and costs, and to share revenue among permit holders. Also, some vessels were experimenting with higher value–added production methods to allow the export of live lobsters to Asian markets. All of these factors make it difficult to determine the economic value of each individual lobster permit.

Thus, NMFS proposes to determine the economic value of each of the 15 Federal lobster permits collectively using the base value time period of 1997–99. That is, the NPV of each permit would use a similar ex–vessel gross revenue proxy to reflect the average ex–vessel net revenue for the fleet as a whole for the 1997–99 time period, times a multiplier of approximately 2.5 that considers the discount rate. Thus, the economic value of each permit, and the NMFS compensation offer, will be identical for all 15 permit holders. All imputed values will be updated to current dollar figures based on Consumer Price Indices.

#### **Implementation**

NMFS proposes to notify eligible permit holders in writing of their individual permit compensation offer, as determined by the compensation mechanism described herein. It is important to note that if the total economic value of all permits combined is greater than the authorized amount minus administrative costs associated with implementing the compensation program, then the amount of monetary compensation disbursed to all participants would be prorated. Within 30 days of receipt of notification, each permit holder would need to review the permit compensation offer, and would be required to notify NMFS in writing of either their voluntary acceptance or non–acceptance of the compensation offer. Failure to inform NMFS of a decision (i.e., acceptance or non–acceptance decision) by the prescribed deadline date would be deemed a non–acceptance by the permit holder. This determination by NMFS of non–acceptance for compensation shall be deemed final and is not subject to agency appeal.

At the conclusion of the 30-day response period, NMFS or its authorized contractor would review all responses from permit holders, identify those who have accepted NMFS' offer of permit compensation, and disburse compensation funds to the permit holders who have accepted. A permit holder's acceptance of compensation funds would immediately invalidate the holder's Federal permit in the NWHI bottomfish and/or lobster fishery, as appropriate, and such permit would be immediately surrendered to NMFS. NMFS would notify the permit holder, at the time that compensation funds are disbursed, that his or her permit is no longer valid, and the vessel would no longer be eligible to participate in the fishery for which compensation has been received. Vessel owners who have

not accepted NMFS' offer of permit compensation are authorized to continue fishing in accordance with the terms and conditions of their respective permits, and to the extent otherwise permitted by law. Permit holders should note that commercial fishing for lobster in waters of the Monument is now prohibited, and that fishing for commercial bottomfish and associated pelagic species will be prohibited in waters of the Monument after June 15, 2011. NMFS solicits comments on the proposed compensation methodology and process.

#### **Transferability of Compensation**

Given that the NWHI lobster fishery was closed permanently as a result of the designation of the Monument, any permit compensation would be provided to the holder of the permit that was valid on the date of the Monument's designation, i.e., June 15, 2006. Although the NWHI bottomfish fishery remains open until June 15, 2011, the permits are not transferrable, so the bottomfish permit compensation would be available only to the holder of the permit at the time the compensation funds are disbursed. Since bottomfish permits are not transferable, any claim to permit compensation is both non–transferable and non–assignable. Accordingly, only the NWHI bottomfish permit holder of record shall be deemed an eligible participant for purposes of receiving permit compensation under this program.

#### **Future Vessel and Gear Buyout Compensation**

Contingent on the availability of appropriated funds after all permit compensation payouts have been made, NMFS proposes to offer compensation to buy back vessels and gear from eligible participants, based on the fair market value of the vessels and gear. For purposes of this proposed program, "eligible participants" shall have the same meaning as described in the permit compensation program above. Because of the limited funds appropriated by Congress for this purpose, there is no guarantee that NMFS actually will offer compensation for any, or all, vessels and gear that otherwise may qualify for this program.

NMFS proposes to use a standard approach in vessel buyout, i.e., reverse auction, where each eligible permit holder would specify a buyout price for retiring their vessel(s) from commercial fishing. NMFS would rank and accept bids, and disburse funds, beginning with the lowest bid and continuing through the bids sequentially until remaining funds were exhausted. Public

comments are sought on this approach and possible alternatives, including methods for valuing vessels and associated gear, and other standard approaches, such as a lottery system or blind auction.

Consistent with the purposes of this buyout, NMFS would require, as a condition of compensation, proof that the vessel and gear have been permanently removed from use in all U.S. commercial fisheries, as defined in 46 U.S. Code § 12101(a). Proof of permanent removal from fisheries may be satisfied by taking any of the following actions:

(1) Providing evidence of scrapping the vessel, which would require disassembly and/or scuttling the vessel in an ecologically safe manner. This method suggests additional costs which would need to be considered in the buyout process; or

(2) Surrendering the vessel's fishery endorsement and transferring the vessel to non-fishing uses. For example, vessels could be transferred to a U.S. public entity, a U.S. nonprofit organization, or a foreign national government for use in research (including fisheries research), education, training, humanitarian work, safety or law enforcement, etc., depending on the group's objectives.

NMFS proposes that vessel owners bear all costs associated with the scrapping or transfer of vessels that are bought out under this program. Funds received from the buyout compensation can be used for this purpose.

#### Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Consolidated Appropriations Act of 2008 and other

applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

An 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 as follows. A description of the action, why it is being considered, and the legal basis for this action are found at the beginning of this section in the preamble and in the SUMMARY section of the preamble. The analysis follows:

This proposed rule will impact the vessel owners who held 15 NWHI lobster permits and eight NWHI bottomfish permits at the time the Monument was designated. These permit holders were determined initially by NMFS to be eligible for compensation under The Act. The Small Business Administration's accepted definition of a small fish harvester as a vessel that produces no more than \$4.0 million in gross revenue annually. Using this definition, all permit holders who are eligible for compensation are defined as small entities. There are no disproportionate economic impacts from this action based on vessel size or home port. There are no recordkeeping, reporting, or other compliance requirements associated with this proposed rule. There are no Federal rules that duplicate, overlap, or conflict with this rule. There would be no adverse economic impact to any of the eligible NWHI bottomfish and lobster permit holders resulting from this rule.

For bottomfish permit holders, the amount of monetary compensation would be derived from an NPV calculation using average ex-vessel net revenue projected over 30 years, and would be imputed as the ex-vessel gross revenue for 2003–05 times a multiplier of approximately 2.5, which is based on the 30-yr discount rate.

The lobster permit holders would receive compensation in the form of equal payments

derived from NPV of the fleet-wide average ex-vessel net revenue for 1997–99, and imputed using a similar ex-vessel gross revenue determination times the multiplier of approximately 2.5, based on the 30-yr discount rate. The 1997–99 period represents the last years that lobster fishing in the NWHI operated under NMFS harvest guidelines. The NPV for the lobster fishery would use the same discount rate and time period as the value imputed for bottomfish permit holders. The real interest rate for 30-year treasury notes and bonds as prescribed by Office of Management and Budget, Circular A–4, Appendix A, is 2.7 percent.

While the intention is to base the imputed value on net revenue calculations, this is difficult given the unavailability of individual cost data. Therefore, NMFS will use a proxy for net revenue based on total, or gross, revenue. Since profit margins within each fishery are assumed to be similar, this would not affect relative amounts of compensation. In addition, with a relatively low real discount rate (2.7 percent) and long time frame (30 years), the differences between net and total revenues will be mitigated.

NMFS will estimate the permit values using official NMFS and State of Hawaii commercial fishing records for the respective time periods. For a more thorough description of the methodology used to determine the economic values of these permits, see Appendix A to the RIR (see ADDRESSES). Any residual funds following the permit compensation program would be available for the vessel and gear buyout program using a standard vessel buyout approach, such as a reverse auction, lottery system, or blind auction.

**Authority:** Pub. L. 110–161.

Dated: April 2, 2009.

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

[FR Doc. E9–7860 Filed 4–6–09; 8:45 am]

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