

2. The 4th NPRM seeks comment on a proposed spectrum etiquette for unlicensed services in the 59–64 GHz frequency band. The proposed spectrum etiquette seeks to: (1) Establish a coordination channel located at 59.0–59.05 GHz to be used exclusively to establish techniques that various transmitters could use to help mitigate or eliminate interference; (2) establish a format for transmitter identification by requiring a 60 GHz transmitter with an output power of 0.1 mW or more to transmit information that contains the FCC ID number, the serial number of the transmitter, and a user definable field of up to 24 bytes of information; (3) adopt a limit for peak equivalent isotropically radiated power of 20 W for 60 GHz transmitters; (4) limit the peak transmitter output power to 500 mW; and (5) limit the peak transmitter output power for transmitters employing a 6 dB bandwidth of less than 100 MHz, as measured with a 100 kHz resolution bandwidth spectrum analyzer, according to the following formula: $P \leq 500 [\text{bandwidth in MHz}/100] \text{ mW}$.

3. The Commission seeks comments on whether it should adopt the standards contained in the MWCWG proposal. The Commission is particularly interested in comments regarding the proposed transmitter identification requirements and the designation of a coordination channel. The Commission wishes to clarify, however, that the reference in the MWCWG filing for “radiated power” actually refers to transmitter output power.

4. Parties commenting on the proposed peak limits and measurements should be aware of the possible application of a pulse desensitization correction factor. Comments should be directed towards the specific substance contained in the proposed Spectrum Etiquette and we remind parties that the actual regulations adopted may differ from those contained in the proposed Spectrum Etiquette.

Initial Regulatory Flexibility Analysis

5. *Need for and Objective of the Rules.* This rule making proceeding is initiated to obtain comments regarding the proposed Spectrum Etiquette for general unlicensed operation in the 59–64 GHz band. The Commission seeks comment on a spectrum etiquette proposed by the Millimeter Wave Communications Working Group for the purpose of minimizing interference among general unlicensed systems operating in the 59–64 GHz band.

6. *Legal Basis.* The proposed action is authorized under Sections 4(j), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and

307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307.

7. *Reporting, Recordkeeping and Other Compliance Requirements.* We propose to establish a spectrum etiquette that would apply to and minimize interference between general unlicensed systems operating in the 59–64 GHz band. The spectrum etiquette will require measurements to be reported to the Commission as part of the normal equipment authorization process under our certification procedure.

8. *Federal Rules Which Overlap, Duplicate or Conflict With These Rules.* None.

9. *Description, Potential Impact and Number of Small Entities Involved.* We expect that multiple manufacturers will manufacture transmitters to operate in the 59–64 GHz band for fixed field disturbance sensors and high speed computer to computer transmission systems.

10. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives.* None.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 15

Communications equipment,
Highway safety, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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DEPARTMENT OF THE INTERIOR

50 CFR Part 38

RIN 1018–AE19

Supplemental Regulations for Administration of Midway Atoll National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes supplemental regulations to provide for the administration of the Midway Islands and Midway Atoll National Wildlife Refuge. Under the provisions of Executive Order 13022 of October 31, 1996, the Midway Islands were transferred from the jurisdiction and

control of the Department of the Navy to the Department of the Interior for administration as a national wildlife refuge by the Service. 61 FR 56875 (1996). The proposed regulations would supplement existing regulations in 50 CFR Parts 25–32 which also apply to Midway Atoll National Refuge.

DATES: Comments may be submitted on or before October 27, 1997.

ADDRESSES: Regional Director, Region 1, U.S. Fish and Wildlife Service, (ARW/OPR), 911 NE 11th. Ave., Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mark Strong, U.S. Fish and Wildlife Service (ARW/OPR), Telephone (503) 231–2075.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is authorized under the National Wildlife Refuge System Administration Act to permit uses of units of the National Wildlife Refuge System which he determines are compatible with the purposes for which the unit was established as a refuge. 16 U.S.C. 668dd(d)(1). Executive Order 13022 of October 31, 1996, vests in the Secretary of the Interior legislative and executive authority necessary for the administration of the Midway Islands as the Midway Atoll National Wildlife Refuge.

The purposes of part 38 are to provide supplemental regulations for the administration of Midway Atoll National Wildlife Refuge in addition to those contained in 50 CFR Parts 25–32; and to delegate certain powers, duties, and responsibilities to appropriate officers of the Service for the administration of Midway Atoll National Wildlife Refuge.

The National Wildlife Refuge System Administration Act (NWRSA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSA authorizes the Secretary of the Interior, under such regulations as he may prescribe, to permit the use of any area within the Refuge System for any purpose, including but not limited to, fishing and public recreation, accommodations and access, whenever he determines that such uses are compatible with the major purpose(s) for which the area was established. Section 48 of the Hawaii Omnibus Act, 74 Stat. 424, provides for the civil administration of Midway Island by the agencies and officials authorized by the President. The President has authorized administration of the Midway Atoll National Wildlife Refuge by the Secretary of the Interior through the

U.S. Fish and Wildlife Service and delegated to the Secretary executive and legislative authority necessary for such administration. Executive Order 13022 (Oct. 31, 1996). The Act of June 15, 1950, 64 Stat. 217, and 48 U.S.C. 644a provide, in part, that the District Court for the District of Hawaii has jurisdiction over all civil and criminal cases arising on or within the Midway Islands.

The RRA authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSA and the RRA also authorizes the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

The executive authority at the Midway Islands is vested in the Secretary of the Interior. The Director of the Service and the Refuge Manager, Midway Atoll National Wildlife Refuge, exercise the Secretary's executive authority with respect to Midway Atoll National Wildlife Refuge.

Request for Comments

The Service and Department of the Interior desire to afford the public a meaningful opportunity to participate in this rulemaking process. Accordingly, a 60-day comment period is provided to facilitate public input. Interested persons may submit written comments concerning this proposed rule to the Regional Director, Region 1, U.S. Fish and Wildlife Service, at the address provided under **ADDRESSES**.

Paperwork Reduction Act

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Economic Effects/Regulatory Flexibility Act Compliance

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866. Under the provisions of Executive Order 13022, the Midway Islands were transferred from the jurisdiction and control of the Department of the Navy to the Department of the Interior for administration as a national wildlife refuge by the Service. There are no private businesses owned or organizations found on the Island, other than Service contractors brought in to carry out well defined contractual functions. Therefore, review under the Regulatory Flexibility Act of 1980 (5

U.S.C. 601 *et seq.*) determined that this proposed rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, and governmental jurisdictions.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3 (b)(2) of Executive Order 12988.

Environmental Considerations

In accordance with 516 DM 2, Appendix 1, the Service has determined that this rule is categorically excluded from the National Environmental Policy Act (NEPA) process because it is limited to "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." 516 D.M. 2, Appendix 1, § 1.10.

Primary Author

The primary author of this rule is Mark Strong, Fish and Wildlife Service, Pacific Region (ARW/OPR).

List of Subjects 50 CFR Part 38

Authority delegations, Law enforcement, Midway Atoll, Wildlife, Wildlife refuges.

Accordingly, the service proposes to amend subchapter C of chapter I, title 50 of the Code of Federal Regulations, by adding a new part 38 to read as follows:

PART 38—MIDWAY ATOLL NATIONAL WILDLIFE REFUGE

Subpart A—General

Sec.

- 38.1 Applicability.
- 38.2 Scope.

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

- 38.3 Executive authority; duration.
- 38.4 Authorized functions, powers, and duties.
- 38.5 Emergency authority.

Subpart C—Prohibitions

- 38.6 General.
- 38.7 Adopted offenses.
- 38.8 Consistency with Federal law.
- 38.9 Breach of the peace.
- 38.10 Trespass.
- 38.11 Prostitution and lewd behavior.
- 38.12 Alcoholic beverages.

- 38.13 Speed limits.
- 38.14 Miscellaneous prohibitions.
- 38.15 Attempt.
- 38.16 Penalties.

Subpart D—Civil Administration

38.17 General

Authority: 5 U.S.C. 301; 16 U.S.C. 460k *et seq.*, 664, 668dd, 742(f), 3901 *et seq.*; 48 U.S.C. 644a; P.L. 86–624, § 48 (74 Stat. 424); E.O. 13022, 61 FR 56875 (1996).

Subpart A—General

§ 38.1 Applicability.

(a) The regulations of this part apply to the Midway Atoll National Wildlife Refuge. For the purposes of this part, the Midway Atoll National Wildlife Refuge includes the Midway Islands, Hawaiian Group, between the parallels of 28°5' and 28°25' North latitude, and their territorial seas located approximately between the meridians of 177°10' and 177°30' West longitude, as were placed under the jurisdiction and control of the Interior Department by the provisions of Executive Order No. 13022 of October 31, 1996.

(b) Administration of Midway Atoll National Wildlife Refuge is governed by the regulations of this part and parts 25–32 of title 50, Code of Federal Regulations; the general principles of common law; the provisions of the criminal laws of the United States in their entirety including the provisions of 18 U.S.C. 13 and those provisions that were not specifically applied to unincorporated possessions; the laws applicable under the special maritime jurisdiction contained in 48 U.S.C. 644a; and the provisions of the criminal laws of the State of Hawaii to the extent the criminal laws of the State of Hawaii do not conflict with the criminal laws of the United States.

§ 38.2 Scope.

The provisions of part 38 are in addition to the regulations of 50 CFR parts 25–32 which also apply to Midway Atoll National Wildlife Refuge.

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

§ 38.3 Executive authority, duration.

The executive authority of the Secretary of the Interior over the Midway Islands shall be exercised by the Service Regional Director. The executive authority of the Service Regional Director may be redelegated to the Refuge Manager, Midway Atoll National Wildlife Refuge.

§ 38.4 Authorized functions, powers, and duties.

The executive authority of the Regional Director concerning the Midway Islands includes:

- (a) Issuance of citations for violations of this part and 50 CFR parts 25–32;
- (b) Abatement of any public nuisance upon the failure of the person concerned to comply with a removal notice;
- (c) Seizure of evidence;
- (d) Investigation of accidents and offenses;
- (e) Custody and disposal of lost or abandoned property;
- (f) Regulation of aircraft and boat traffic and safety;
- (g) Imposition of quarantines;
- (h) Evacuation of hazardous areas;
- (i) Lawful restraint, detention, confinement, and care of persons prior to their prompt transfer to the custody of the United States District Court for the District of Hawaii;
- (j) Lawful removal of persons from the Midway Atoll National Wildlife Refuge for cause;
- (k) Regulation of vehicle traffic and safety;
- (l) Performance of other lawful acts necessary for protecting the health and safety of persons and property on Midway Atoll National Wildlife Refuge; and
- (m) Issuance of lawful notices and orders necessary to the exercise of executive authority under this section.

§ 38.5 Emergency authority.

During the imminence and duration of any emergency, the Regional Director may perform any lawful acts necessary to protect life and property on Midway Atoll National Wildlife Refuge.

Subpart C—Prohibitions**§ 38.6 General.**

In addition to any act prohibited by this part or 50 CFR part 27, any act committed on the Midway Atoll National Wildlife Refuge that would be a violation of the criminal laws of the United States or of the State of Hawaii as specified in subpart A, as they now appear or as they may be amended or recodified; or any act committed on the Midway Atoll National Wildlife Refuge that would be criminal if committed on board a merchant vessel or other vessel belonging to the United States pursuant to the provisions of 48 U.S.C. 644a, is prohibited and punishable, in accordance with the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd, the criminal laws of the United States or the State of Hawaii as specified in subpart A, as they now

appear or as they may be amended or recodified; or according to the laws applicable on board United States vessels on the high seas pursuant to the provisions of 48 U.S.C. 644a.

§ 38.7 Adopted offenses.

Any person who commits any act or omission on Midway Atoll National Wildlife Refuge which, although not made punishable by an enactment of Congress, would be punishable if committed within the United States under the United States criminal code at the time of such act or omission, including any provisions of the United States criminal code that are not specifically applied to unincorporated possessions of the United States, shall be guilty of a like offense and subject to like punishment. Any person who commits any act or omission on Midway Atoll National Wildlife Refuge which, although not made punishable by an enactment of Congress, would be punishable if committed within the State of Hawaii by the laws thereof at the time of such act or omission, shall be guilty of a like offense and subject to like punishment to the extent the laws of the State of Hawaii do not conflict with the criminal laws of the United States.

§ 38.8 Consistency with Federal law.

Any provisions of the laws of the State of Hawaii, as they now appear or as they may be amended or recodified, which are adopted by this part shall apply only to the extent that they are not in conflict with any applicable Federal law or regulation.

§ 38.9 Breach of the peace.

No person on Midway Atoll National Wildlife Refuge shall:

- (a) With intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, engage in fighting, threatening, or other violent or tumultuous behavior; or make unreasonable noise or offensively coarse utterances, gestures, or displays, or address abusive language to any person present; or create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit;
- (b) Having no legal privilege to do so, knowingly or recklessly obstruct any roadway, alley, runway, private driveway, or public passage, or interfere with or unreasonably delay any emergency vehicle or equipment or authorized vehicle, boat, vessel, or plane, or any peace officer, fireman, or other public official engaged in or attempting to discharge any lawful duty or office, whether alone or with others.

“Obstruction” as used in this paragraph means rendering impassable without unreasonable inconvenience or hazard;

(c) When in a gathering, refuse to obey a reasonable request or order by a peace officer, fireman, or other public official to move;

(1) To prevent an obstruction of any public road or passage;

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard; or

(d) With intent to arouse or gratify sexual desire of any other person, expose one's genitals under circumstances in which one's conduct is likely to cause affront or alarm.

§ 38.10 Trespass.

No person on Midway Atoll National Wildlife Refuge shall:

(a) Loiter, prowl, or wander upon or near the assigned living quarters and adjacent property of another without lawful purpose, or, while being upon or near the assigned living quarters and adjacent property of another, peek in any door or window of an inhabited building or structure located thereon without lawful purpose;

(b) Enter upon any assigned residential quarters or areas immediately adjacent thereto, without permission of the assigned occupant;

(c) Enter or remain in, without lawful purpose, any office building, warehouse, plant, theater, club, school, or other building after normal operating hours for that building; or

(d) Enter or remain in any area or building designated and posted as “restricted” unless authorized by proper authority to be there.

§ 38.11 Prostitution and lewd behavior.

No person on Midway Atoll National Wildlife Refuge shall:

(a) Engage in prostitution.

“Prostitution” means the giving or receiving of the body for sexual intercourse for hire or for indiscriminate sexual intercourse with or without hire; or

(b) Commit any lewd act in a public place which is likely to be observed by others who would be affronted or alarmed.

§ 38.12 Alcoholic beverages.

No person on Midway Atoll National Wildlife Refuge shall:

(a) Sell any alcoholic beverages to any person who, because of age, would be prohibited from purchasing that beverage in a civilian establishment in Hawaii.

(b) Present or have in possession any fraudulent evidence of age for the purpose of obtaining alcoholic beverages in violation of this paragraph.

(c) Be substantially intoxicated on any street, road, beach, theater, club, or other public place from the voluntary use of intoxicating liquor, drugs or other substance. As used in this paragraph, "substantially intoxicated" is defined as an actual impairment of mental or physical capacities.

§ 38.13 Speed limits.

No person on Midway Atoll National Wildlife Refuge shall exceed the speed limit for automobiles, trucks, bicycles, motorcycles, or other vehicles. Unless otherwise posted, the speed limit throughout the Midway Atoll National Wildlife Refuge is 15 miles per hour.

§ 38.14 Miscellaneous prohibitions.

No person on Midway Atoll National Wildlife Refuge shall:

(a) Smoke or ignite any fire in any designated and posted "No Smoking" area, or in the immediate proximity of any aircraft, fueling pit, or hazardous material storage area;

(b) Knowingly report or cause to be reported to any public official, or willfully activate or cause to be activated, any alarm, that an emergency exists, knowing that such report or alarm is false. "Emergency," as used herein, includes any condition which results, or could result, in the response of a public official in an emergency vehicle, or any condition which jeopardizes, or could jeopardize, public lives or safety, or results or could result in the evacuation of an area, building, structure, vehicle, aircraft, or boat or other vessel, or any other place by its occupants; or

(c) Intentionally report to any public official authorized to issue a warrant of arrest or make an arrest, that a crime has been committed, or make any oral or written statement to any of the above officials concerning a crime or alleged crime or other matter, knowing such report or statement to be false.

§ 38.15 Attempt.

No person on Midway Atoll National Wildlife Refuge shall attempt to commit any offense prohibited by this part.

§ 38.16 Penalties.

Any person who violates any provision of this part shall be fined or imprisoned in accordance with 16 U.S.C. 668dd(e) and Title 18, U.S. Code.

Subpart D—Civil Administration

§ 38.17 General.

Civil administration of Midway Atoll National Wildlife Refuge shall be governed by the provisions of this part 38, 50 CFR parts 25–32, and the general principles of common law.

Dated: July 27, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–22714 Filed 8–26–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 082097D]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Scoping Process for Atlantic Sea Herring

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare a Fishery Management Plan (FMP) for Atlantic sea herring (*Clupea harengus*) and stocks, and to prepare an SEIS to analyze the impacts of any proposed management measures, while the Atlantic States Marine Fisheries Commission (Commission) develops a complementary amendment to its Atlantic Herring FMP under the authority of the Atlantic Coastal Fisheries Cooperative Management Act. The Council and Commission also formally announce a public process to determine the scope of issues to be addressed in the environmental impact analysis. The purpose of this notification is to alert the interested public of the commencement of the scoping process, and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council will discuss and take scoping comments at public meetings in September 1997. See SUPPLEMENTARY INFORMATION for specific dates and times. Written scoping comments may be submitted until September 15, 1997.

ADDRESSES: The Council will discuss and take scoping comments at public meetings in Massachusetts, Maine, Rhode Island, and New Jersey. See SUPPLEMENTARY INFORMATION for specific locations. Written comments and requests for copies of the scoping

document and other information can be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, Telephone (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic herring fishery is currently managed as one stock along the East Coast from Maine to Cape Hatteras although there is evidence to suggest there are two separate biological stocks. Generally, the resource has been divided into an inshore Gulf of Maine (GOM) and an offshore Georges Bank (GB) component. The most recent stock assessment (1995) concluded that the abundance of the coastal stock complex is currently at a record high level of 3.6 million metric tons (mt), while the most recent estimate of spawning stock biomass (SSB) is 2.1 million mt. The current level of abundance has generated great interest in new and expanded sectors of the herring fishery, including: (1) Maintaining traditional use patterns in the fishery; (2) increasing the bait fishery; (3) increasing participation in cooperative ventures with foreign vessels (Internal Water Processing (IWP) and Joint Venture Processing (JV)); (4) providing a viable alternative fishery to vessels currently in the groundfish fishery; (5) providing opportunities for increased development of U.S. shore-side processing capacity; (6) interest in participating in the fishery from Pacific Coast fishing operations; (7) maintaining high stock abundance for ecological reasons (i.e., maintaining a forage base for base for other species); and (8) providing opportunities for modernization and improvement of the existing East coast vessels to be able to compete in supplying human food export markets.

These potentially competing interests have generated different views on how the herring fishery should be managed in the future. Additionally, the interest in rapid expansion of the fishery has raised concerns about potential overharvest, locally or on the entire stock. In the late 1960s and the early 1970s, excessive foreign fishing led to the collapse of the GB stock. The stock has collapsed a number of times in the past due to over harvesting. There is currently great concern over the condition of the GOM component of the herring population but existing data are insufficient to separate individual