

substantial number of small entities. Our regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

This action will not significantly affect either the quality of human environment or the conservation of energy resources.

Notice of the final rules adopted here will be transmitted to Congress pursuant to Pub. L. 104-121 (Mar. 29, 1996).

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: April 24, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

Accordingly, the interim rules amending 49 CFR Parts 1002 and 1180, which were published at 62 FR 9714 on March 4, 1997, are adopted as final rules with the following changes:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323-11325.

2. Section 1180.3 is amended by revising paragraph (h) to read as follows:

§ 1180.3 Definitions.

* * * * *

(h) Responsive applications.

Applications filed in response to a primary application are those seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application, petition, notice, or any other filing to be submitted to the Board (such as trackage rights, purchases, constructions, operation, pooling, terminal operations, abandonments, and other types of proceedings not otherwise covered). For fees covering inconsistent applications or responsive applications

not otherwise covered in the Board's fee schedule, see 49 CFR 1002.2(f) (38)-(41) and 1180.4(d)(4)(ii). The fees for all other responsive applications are set forth in 49 CFR 1002.2(f).

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[FR Doc. 97-13635 Filed 5-22-97; 8:45 am]

BILLING CODE 4915-00-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970512113-7113-01; I.D. 042297D]

RIN 0648-AJ56

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 1997 Harvest Guideline

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

ACTION: Harvest guideline for crustaceans for 1997.

SUMMARY: NMFS announces a 1997 harvest guideline of 327,000 lobsters for the Northwestern Hawaiian Islands (NWHI) crustacean fishery. The guideline was calculated according to the formula in Amendment 9 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP), and includes spiny and slipper lobster combined. This harvest guideline is for the 1997 fishing year, which begins July 1, 1997; however, the harvest guideline system will be adjusted before the beginning of the season to account for lobster mortality from discards of lobster by permit holders. The intent of this action is to prevent overfishing and achieve the objectives of the FMP.

DATES: Effective July 1, 1997.

ADDRESSES: Copies of background material for determining the harvest guideline may be obtained from Dr. William T. Hogarth, Acting Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Katekaru, NMFS, (808) 973-2985 or Mr. Svein Fougner, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: The annual harvest guideline for the crustacean fishery is to be announced in the **Federal Register** by

March 31 of each year. The harvest guideline is determined by the Southwest Regional Administrator, NMFS, based on previous years' fishery data, sampling during research cruises, and other available data. A population model that is used in the process for determining the harvest guideline is described in Amendment 9 to the FMP, which provides that an annual harvest guideline will be derived by multiplying a constant harvest rate associated with a specific level of risk of overfishing times the exploitable population estimated by the NMFS. Under Amendment 9, there is no limit on retention of spiny or slipper lobsters based on size or reproductive condition. The harvest guideline is a specified numerical harvest objective and is expected to represent total mortality from the fishery. When the harvest guideline is estimated to be reached, the Regional Administrator will close the fishery.

The 1996 fishing season was the first season managed under the provisions of Amendment 9. Data on discarded lobsters reported by permit holders indicated that high-grading (retention of only the more valuable components of the catch) was about 2,300 lobsters. However, an analysis of data obtained by sampling the landings and comparing size composition of the landings with expected size composition based on research and experimental fishing results provided evidence that a higher level of high-grading occurred. Mortality of discarded lobster is believed to be high in the NWHI; therefore, high-grading would result in mortality in excess of the harvest guideline and thus compromise a major objective of Amendment 9.

Because there were differences between the estimate of high-grading by NMFS and the reported discarding by the permit holders in 1996, the Council convened a panel of technical experts to conduct a thorough review of the 1996 fishery and the underlying population model and harvest guideline system. That panel concluded that, while the approach used by NMFS to estimate high-grading was technically sound, there were significant questions about the underlying assumptions and data used in making the estimate. The review panel found that the analytical procedure likely resulted in an overestimate of discarding in 1996. The review panel agreed, however, that discarding needs to be accounted for in the management program.

The Council met in April and, after considering the inputs from the experts panel and its Advisory Panel, Plan Team, and Scientific and Statistical

Committee, determined that changes are needed in the harvest guideline system to ensure achievement of the objectives of the FMP as amended by Amendment 9. Necessary changes include a pre-season or in-season estimate of the amount of high-grading and associated mortality so that the fishery can be closed when total harvest (retained catch plus discards) reaches the harvest guideline level. Accordingly, a change in the harvest guideline system for the 1997 season is necessary before the beginning of the fishing season on July 1. This system can be implemented under the framework procedures of Amendment 9, in this case the "Procedure for established measures" at 50 CFR 660.53(c). Permit holders and the public will be advised of the change by publication in the **Federal Register** before July 1. A letter also will be sent by the Regional Administrator to all

permit holders to advise them of the action.

The Southwest Region, NMFS, will monitor landings against the harvest guideline and issue timely reports of summary catch and effort information. However, participants are advised to contact the Southwest Region (see **ADDRESSES**) periodically to stay abreast of any change in the harvest guideline and progress of the fishery toward attaining the harvest guideline. Under the procedures in 50 CFR 660.50(b)(3), NMFS will announce the date upon which the harvest guideline will be reached and close the fishery.

Classification

This action is authorized by 50 CFR part 660 and is exempt from review under E.O. 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other

law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The Assistant Administrator for Fisheries (AA), NOAA, finds that since this notice merely announces a quota resulting from the nondiscretionary application of the objective quota formula in Amendment 9 to the FMP, no useful purpose would be served by providing prior notice and opportunity for public comment. Accordingly, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive as unnecessary the requirement to provide prior notice and opportunity for public comment.

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

Dated: May 20, 1997.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Services.*

[FR Doc. 97-13674 Filed 5-22-97; 8:45 am]

BILLING CODE 3510-22-F