

native groups, such as a cooperative, is permitted so long as no large scale mass production results.

* * * * *

Wasteful Manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence, subsistence uses, or for the making of authentic native articles of handicrafts and clothing, or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

[FR Doc. 96-6855 Filed 3-21-96; 8:45 am]

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50 CFR Part 300

[Docket No. 960228054-6054-01; I.D. 120495A]

RIN 0648-A150

High Seas Fishing Compliance Act; Initial Regulations; OMB Control Numbers

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues an interim final rule (IFR) to implement the High Seas Fishing Compliance Act of 1995 (HSFCA). The purpose of the HSFCA is to license U.S. vessels fishing on the high seas and to implement the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Agreement).

DATES: Effective upon publication. Comments must be received on or before May 21, 1996.

ADDRESSES: Send comments on the IFR and on the collection-of-information requirement to Richard Schaefer, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. Also send comments on the collection-of-information requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Paperwork Reduction Project 0648-0304, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Robert Dickinson, (301) 713-2337.

SUPPLEMENTARY INFORMATION: On November 24, 1993, the United Nations Food and Agriculture Organization (FAO) adopted the Agreement. The Agreement was negotiated largely at the initiative of the United States in response to fisheries crises that have arisen in many areas of the world. As the size and efficiency of modern fleets have come to exceed the productivity of their traditional coastal harvesting areas, fishery managers of coastal nations generally have reacted by imposing stricter management regimes. As a result, increasing numbers of vessels have sought fishing opportunities on the high seas.

The need for the Agreement evolved from the concern that vessels belonging to member nations of regional fisheries organizations were reflagging to non-member nations, in order to continue fishing in the management areas unconstrained by rules set by the organizations and their members. For example, the effectiveness of the International Commission for the Conservation of Atlantic Tunas (ICCAT) has been compromised by vessels registered in nations that are not ICCAT members. Flying "flags of convenience," these vessels then fish for tuna in the North Atlantic in defiance of ICCAT rules and management regimes.

Although the Agreement has been popularly referred to as the "reflagging agreement," it does not deal directly with the reflagging of fishing vessels, in part because FAO negotiators did not wish to deter legitimate transfers of vessel registries or flags. The primary tenet of the Agreement is the obligation of Parties to the Agreement (Parties) to require that fishing vessels carrying their flags obtain specific authorization to operate on the high seas. Parties are also responsible for ensuring that their authorized vessels do not undermine conservation and management measures that have been adopted by global or regional fishery management organizations.

The HSFCA implements the Agreement, primarily by requiring a system of licensing for all U.S. vessels that fish on the high seas, and by requiring vessels so licensed to fish in accordance with international conservation and management measures recognized by the United States. The HSFCA also requires the Secretary of Commerce (Secretary), in consultation with the Secretary of State, to publish from time to time in the Federal Register a list of agreements containing or resulting in such measures.

For purposes of the HSFCA, the Secretary, in consultation with the Secretary of State, has determined that

all conservation and management measures for living marine resources set forth in, or adopted pursuant to, the following international agreements to which the United States is party are included within the term "international conservation and management measures recognized by the United States," except any such measure to which the United States, consistent with the terms of such agreement, has lodged an objection or reservation:

International Convention for the Conservation of Atlantic Tunas (basic instrument for the International Commission for the Conservation of Atlantic Tunas—ICCAT);

Convention between the United States of America and the Republic of Costa Rica for the Establishment of an Inter-American Tropical Tuna Commission (basic instrument for the Inter-American Tropical Tuna Commission—IATTC);

Convention for the Conservation of Salmon in the North Atlantic Ocean (basic instrument for the North Atlantic Salmon Conservation Organization—NASCO);

Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (basic instrument for the Northwest Atlantic Fisheries Organization—NAFO);

Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean (basic instrument for the North Pacific Anadromous Fish Commission—NPAFC);

Convention on the Conservation and Management of Pollock Resources of the Central Bering Sea;

Convention for the Conservation of Antarctic Marine Living Resources (basic instrument for the Commission for the Conservation of Antarctic Marine Living Resources—CCAMLR);

International Convention for the Regulation of Whaling (basic instrument for the International Whaling Commission—IWC);

Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America;

Convention for the Conservation of Antarctic Seals;

Agreement to Reduce Dolphin Mortality in the Eastern Tropical Pacific Tuna Fishery; and

Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Ocean.

In addition, conservation and management measures set forth in, or adopted pursuant to, the following international agreements to which the United States is not party are included in the term "international conservation

and management measures recognized by the United States”:

Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries (basic instrument for the North-East Atlantic Fisheries Commission);

Agreement between the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics Concerning Cooperation in the Field of Fisheries; and
Convention for the Conservation of Southern Bluefin Tuna.

This listing of “international conservation and management measures recognized by the United States” will be revised and updated from time to time by publication in the Federal Register. The inclusion or exclusion of items from this listing is without prejudice to any positions or views the United States Government may take or express with regard to such items in the future.

This IFR implements the application and issuance procedures for HSFCA permits. Application forms are available from NMFS Regional Offices. Applicants for HSFCA permits are encouraged to apply for their permits through the NMFS Regional Office with which they usually interact on Federal fisheries matters. The amount of fees charged for a permit issued under the HSFCA may recover administrative costs incurred in issuing such permits. Anticipated administrative costs for issuance of HSFCA permits have been determined to be \$50.00 per application. This amount is the HSFCA application fee until further notice.

Permits issued under the HSFCA are valid for 5 years. Except for vessels that have unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a judicial proceeding under any statute administered by NOAA, any vessel of the United States is eligible to receive a permit under the HSFCA, unless the vessel was previously authorized by a foreign nation to be used for fishing on the high seas, and (1) the foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or (2) the foreign nation, within the 3 years preceding application for a permit under the HSFCA, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

The restrictions in the above paragraph related to any sanctions imposed on a vessel by a foreign nation do not apply if ownership of the vessel

has changed since the vessel undermined the effectiveness of international conservation and management measures, and the present owner provides sufficient evidence to the director of the NMFS Regional Office serving as the issuing office (Regional Director) demonstrating that the owner and operator at the time the vessel undermined the effectiveness of international conservation and management measures have no further legal, beneficial, or financial interest in, or control of, the vessel. The restrictions in the above paragraph related to any sanctions imposed on a vessel by a foreign nation also do not apply if a determination is made by the Regional Director that issuing a permit under the HSFCA would not subvert the purposes of the Agreement.

A permit issued under the HSFCA is void in the event the permitted vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.

NMFS has experienced delays in implementing the HSFCA due to government furloughs and closures. NMFS realizes that some individuals may experience unavoidable delays in obtaining an HSFCA permit due to circumstances such as extended trips at sea. Such individual circumstances will be taken into consideration during any enforcement operations.

Classification

The Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), finds that the need to license U.S. vessels to fish on the high seas, as required by the HSFCA, constitutes good cause to waive providing notice and the opportunity for public comment and to waive the 30-day delay in effective date under 5 U.S.C. 553(d)(3). Because the HSFCA requires that owners and operators of such vessels have licenses in order to operate legally on the high seas after March 3, 1996, delay in the issuance and effectiveness of this rule affording them the opportunity to apply for such licenses would be contrary to the public interest.

This IFR has been determined to be not significant for purposes of E.O. 12866.

This IFR contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely the information required to be submitted on a permit application. The collection of this information has been approved by the OMB under OMB Control Number 0648-0304. The burden estimate for compliance is 30 minutes. Send comments regarding this burden

estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Richard Schaefer, NMFS, or the Office of Information and Regulatory Affairs, OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

High Seas Fishing, Fisheries, Permits, International Agreements, Reporting and recordkeeping requirements.

Dated: March 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter III are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In 902.1, paragraph (b), the table is amended by adding in the left column under 50 CFR, in numerical order, “300.4”, and in the right column, in corresponding position, the control number “-0304.”.

50 CFR Chapter III

3. Subchapters A through D are redesignated as Subchapters B through E, respectively.

4. Subchapter A, High Seas Fishing Compliance Act, consisting of Part 300, is added to read as follows:

SUBCHAPTER A—HIGH SEAS FISHING COMPLIANCE ACT

PART 300—HIGH SEAS FISHERIES

Subpart A—General Provisions

Sec.	
300.1	Purpose.
300.2	Definitions.
300.3	Issuing offices.
300.4	Vessel permits.
300.5	Vessel and gear identification.
	[Reserved]
300.6	Prohibitions.

- 300.7 Facilitation of enforcement.
300.8 Penalties.

Subpart B—Reporting and Recording

300.20 [Reserved]

Authority: 16 U.S.C. 5501 *et seq.*

Subpart A—General Provisions

§ 300.1 Purpose.

This part implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary of Commerce to license U.S. vessels fishing on the high seas.

§ 300.2 Definitions.

The terms used in this part have the following meanings:

Act means the High Seas Fishing Compliance Act of 1995, 16 U.S.C. 5501 *et seq.*

Agreement means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or fisheries enforcement officer of NMFS; or

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the U.S. Coast Guard to enforce the provisions of the Act.

High seas means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

High seas fishing vessel means any vessel of the United States used or intended for use:

(1) On the high seas;

(2) For the purpose of the commercial exploitation of living marine resources; and

(3) As a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing operation.

International conservation and management measures means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United

Nations Convention on the Law of the Sea, and that are recognized by the United States.

NMFS means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

NMFS issuing office means the NMFS regional office through which a permit is issued under the Act.

Operator means, with respect to any vessel, the master or other individual on board and in charge of that vessel.

Owner means, with respect to any vessel:

(1) Any person who owns that vessel in whole or part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by a person described in this paragraph.

Regional Director means the director of the NMFS regional office serving as the issuing office.

§ 300.3 Issuing offices.

NMFS Regional Offices will issue permits required under this part. While applicants for permits may submit an application to any NMFS Regional Office, applicants are encouraged to submit their applications to the NMFS Regional Office with which they normally interact on fisheries matters. The addresses of the NMFS Regional Offices are as follows:

(a) Northeast Region, NMFS, (Attn: HSFCA Permits), One Blackburn Drive, Gloucester, MA 01930–2298.

(b) Southeast Region, NMFS, (Attn: HSFCA Permits), 9721 Executive Center Drive, N., St. Petersburg, FL 33702.

(c) Southwest Region, NMFS, (Attn: HSFCA Permits), 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

(d) Northwest Region, NMFS, (Attn: HSFCA Permits), 7600 Sand Point Way, NE., BIN C15700, Bldg. 1, Seattle, WA 98115.

(e) Alaska Region, NMFS, (Attn: HSFCA Permits), 709 West Ninth Street, Suite 401, P.O. Box 21668, Juneau, AK 99802.

§ 300.4 Vessel permits.

(a) *Eligibility.* (1) Except for vessels having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a judicial proceeding under any statute administered by NOAA, any high seas

fishing vessel of the United States is eligible to receive a permit under this part, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Director demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures has no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if it is determined by the Regional Director that issuing a permit would not subvert the purposes of the Agreement.

(b) *Application forms.* The owner or operator of a high seas fishing vessel may apply for a permit under this part by completing an application form. Applicants may obtain an application form from an NMFS issuing office listed in § 300.3. (c) *Application information.* An applicant must submit a complete and accurate permit application, signed by the owner or operator, to the appropriate Regional Director.

(d) *Fees.* The NMFS issuing office will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee is specified with the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit.

(e) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit, which will include appropriate

conditions or restrictions, within 30 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Director will notify the applicant of any deficiency in the application.

(f) *Validity.* Permits issued under this part are valid for 5 years from the date of issuance. Renewal of a permit prior to its expiration is the responsibility of the permit holder. For a permit to remain valid to its expiration date, the vessel's U.S. Coast Guard documentation or state registration must be kept current. A permit issued under this part is void when the name of the owner or vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.

(g) *Change in application information.* Any changes in vessel documentation status or other permit application information must be reported to the Regional Director in writing within 15 days of such changes.

(h) *Transfer.* A permit issued under this part is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) *Display.* A valid permit, or a copy thereof, issued under this part must be on board the vessel while operating on the high seas and available for inspection by an authorized officer. Faxed copies of permits are acceptable.

§ 300.5 Vessel and gear identification. **[Reserved]**

§ 300.6 Prohibitions.

It is unlawful for any person to:

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under § 300.4.

(c) Violate the conditions or restrictions of a permit issued under § 300.4.

(d) Fail to submit information, fail to submit information in a timely manner, or to submit false or inaccurate information, with respect to any information required to be submitted, reported, communicated, or recorded pursuant to the Act or the regulations in this part.

(e) Refuse to permit an authorized officer to board a high seas fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the

enforcement of the Act, this part or any other applicable law.

(f) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection described in paragraph (e) of this section.

(g) Resist a lawful arrest or detention for any act prohibited by this section.

(h) Interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section.

(i) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of, any living marine resource taken or retained in violation of the Act or this part.

(j) Violate any provision of the Act or the regulations in this part.

§ 300.7 Facilitation of enforcement.

(a) *Compliance.* The operator of, or any other person on board, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Act and this part.

(b) *Communications.* (1) Upon being approached at sea by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer on board, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method of communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop. In the International Code of Signals, "L" (·-·) means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes prima facie evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel immediately.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Monitor Channel 16, VHF-FM, if so equipped;

(2) Stop immediately and lay to or, if appropriate and/or directed to do so by the authorized officer, maneuver in such a way as to allow the safe boarding of the vessel by the authorized officer and the boarding party;

(3) Except for those vessels with a freeboard of 4 ft (1.25 meters) or less, provide a safe ladder, if needed, for the authorized officer and boarding party to come on board;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone.

Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (·-· ·-·) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (·-· ·-· ·-· ·-·) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear that may be in the water.

(3) "SQ3" (... ·-· ·-·) means "you should stop or heave to; I am going to board you."

§ 300.8 Penalties.

Any person or high seas fishing vessel found to be in violation of the Act, this part, or any permit issued under this part will be subject to the civil and criminal penalty provisions, permit

sanctions, and forfeiture provisions prescribed in the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws.

Subpart B—Reporting and recordkeeping.

§ 300.20 [Reserved]

[FR Doc. 96-6867 Filed 3-21-96; 3:24 pm]

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