

**Fishery Conservation and Management**

**§ 665.242**

will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

**§§ 665.229–665.239 [Reserved]**

**§ 665.240 Hawaii crustacean fisheries. [Reserved]**

**§ 665.241 Definitions.**

As used in §§ 665.240 through 665.259:

*Hawaii crustacean management area* is divided into the following areas:

(1) *Crustacean Permit Area 1 (Permit Area 1)* means the EEZ around the NWHI.

(2) *Crustacean Permit Area 2 (Permit Area 2)* means the EEZ around the MHI.

(3) *Crustacean Permit Area 1 VMS Subarea* means an area within the EEZ around the NWHI 50 nm from the center geographical positions of the islands and reefs in the NWHI as follows:

Name	N. lat.	W. long.
Nihoa Island .....	23°05'	161°55'
Necker Island .....	23°35'	164°40'
French Frigate Shoals .....	23°45'	166°15'
Gardner Pinnacles .....	25°00'	168°00'
Maro Reef .....	25°25'	170°35'
Laysan Island .....	25°45'	171°45'
Lisianski Island .....	26°00'	173°55'
Pearl and Hermes Reef .....	27°50'	175°50'
Midway Island .....	28°14'	177°22'
Kure Island .....	28°25'	178°20'

The remainder of the VMS subarea is delimited by parallel lines tangent to and connecting the 50-nm areas around the following: from Nihoa Island to Necker Island; from French Frigate Shoals to Gardner Pinnacles; from Gardner Pinnacles to Maro Reef; from Laysan Island to Lisianski Island; and from Lisianski Island to Pearl and Hermes Reef.

*Hawaii crustacean management unit species (Hawaii crustacean MUS)* means the following crustaceans:

Local name	English common name	Scientific name
Ula .....	spiny lobster .....	<i>Panulirus marginatus</i> , <i>Panulirus penicillatus</i> .
ula papapa .....	slipper lobster .....	Scyllaridae.
papa'i kua loa	Kona crab .....	<i>Ranina ranina</i> .
	deepwater shrimp	<i>Heterocarpus</i> spp.

*Interested parties* means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under §665.242, and any person who has notified the Regional Administrator of his or her interest in the procedures and decisions described in §665.248, and who has specifically re-

quested to be considered an “interested party.”

*Lobster grounds* refers, singularly or collectively, to the following four areas in Crustacean Permit Area 1 that shall be used to manage the lobster fishery:

(1) Necker Island Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00' N. lat., 165°00' W. long.; 24°00' N. lat., 164°00' W. long.; 23°00' N. lat., 164°00' W. long.; and 23°00' N. lat., 165°00' W. long.

(2) Gardner Pinnacles Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20' N. lat., 168°20' W. long.; 25°20' N. lat., 167°40' W. long.; 24°20' N. lat., 167°40' W. long.; and 24°20' N. lat., 168°20' W. long.

(3) Maro Reef Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40' N. lat., 171°00' W. long.; 25°40' N. lat., 170°20' W. long.; 25°00' N. lat., 170°20' W. long.; and 25°00' N. lat., 171°00' W. long.

(4) General NWHI Lobster Grounds—all waters within Crustacean Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

**§ 665.242 Permits.**

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 must have a permit issued for such a vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Areas 1 or 2 must have a permit issued for that vessel.

(4) Harvest of Hawaii crustacean MUS within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in §665.13.

(c) *Application.* An application for a permit required under this section will

be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) *Lobster Limited Access Permit Requirements.* (1) A lobster limited access permit is valid for fishing only in Crustacean Permit Area 1.

(2) Only one permit will be assigned to any vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

(4) A maximum of 15 limited access permits can be valid at any time.

(e) *Transfer or sale of limited access permits.* (1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, PIRO must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 665.13. The transferred permit is not valid until this process is completed.

(f) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

(g) *Issuance of limited access permits to future applicants.* (1) The Regional Administrator may issue limited access

permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Administrator has determined that limited access permits may be issued to new persons, a notice shall be placed in the FEDERAL REGISTER, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the FEDERAL REGISTER notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Administrator through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Administrator shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

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(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50 percent share in the vessel that the permit would cover.

### § 665.243 Prohibitions.

In addition to the general prohibitions specified in 50 CFR §§ 600.725 and 665.15, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 665.242.

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 665.245.

(iii) From closed areas for lobsters, as specified in § 665.251.

(iv) During a closed season, as specified in § 665.250.

(v) After the closure date, as specified in § 665.252, and until the fishery opens again in the following calendar year.

(vi) In a lobster grounds after closure of that grounds as specified in § 665.252(b).

(2) Fail to report before landing or offloading as specified in § 665.244.

(3) Fail to comply with any protective measures implemented under § 665.248.

(4) Leave a trap unattended in the Hawaii crustacean management area except as provided in § 665.245.

(5) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 665.245.

(6) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 665.252, until the fishery opens again the following year.

(7) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Administrator for inspection and copying any records that must be made available in accordance with § 665.14(g)(2).

(8) Possess on a fishing vessel that has a limited access permit issued under § 665.242 any lobster trap in Crustacean Permit Area 1 when fishing for lobster is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, or except as allowed under § 665.245(a)(7).

(9) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustacean Permit Area 1 VMS Subarea when fishing for lobsters is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, except as allowed under § 665.245(a)(8).

(10) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same while engaged in the Permit Area 1 fishery; or to move or remove a VMS unit while engaged in the Permit Area 1 fishery without first notifying the Regional Administrator.

(11) Make a false statement, oral or written, to the Regional Administrator or an authorized officer, regarding the certification, use, operation, or maintenance of a VMS unit used in the fishery.

(12) Fail to allow an authorized officer to inspect and certify a VMS unit used in the fishery.

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 665.252(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 665.245; or

(ii) During a closed season, as specified in § 665.250(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2