

to any particular management regime or criteria for entry into the commercial wreckfish sector. Fishermen are not guaranteed future participation in the sector regardless of their level of participation before or after the control date. The Council may recommend a different control date or it may recommend a management regime that does not involve a control date. Other criteria, such as documentation of landings or fishing effort, may be used to determine eligibility for participation in a limited access fishery. The Council and/or NMFS also may choose to take no further action to control entry or access to the subject sector, in which case the control date may be rescinded. Any action by the Council will be taken pursuant to the requirements for fishery management plan and amendment development established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the commercial wreckfish sector in the South Atlantic EEZ.

This rule has been determined to be not significant under E.O. 12866.

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

Dated: July 28, 2011.

**Eric C. Schwaab,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 110711384-1398-01]

RIN 0648-XA470

#### Western Pacific Bottomfish and Seamount Groundfish Fisheries; 2011-12 Main Hawaiian Islands Deep 7 Bottomfish Annual Catch Limits and Accountability Measures

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

**ACTION:** Proposed specification; request for comments.

**SUMMARY:** NMFS proposes to specify a quota (annual catch target, ACT) of 325,000 lb (147,418 kg) of Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2011-12 fishing

year, based on a proposed annual catch limit (ACL) of 346,000 lb (156,943 kg). When the fishery is projected to reach the quota, NMFS would close, as an accountability measure, the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed specifications and fishery closure support the long-term sustainability of Hawaii bottomfish.

**DATES:** Comments must be received by August 18, 2011.

**ADDRESSES:** Comments on this proposed specification, identified by 0648-XA470, may be sent to either of the following addresses:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>; or
- **Mail:** Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

**Instructions:** Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

An environmental assessment (EA) was prepared that describes the impact on the human environment that would result from this proposed action. Based on the EA, NMFS prepared a finding of no significant impact (FONSI) for the proposed action. Copies of the EA and FONSI are available from <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808-944-2108.

**SUPPLEMENTARY INFORMATION:** The bottomfish fishery in Federal waters around Hawaii is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific

Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Amendment 3 to the Hawaii FEP established a process for the Council and NMFS to specify annual catch limits and accountability measures; that process is codified at 50 CFR 665.4 (76 FR 37285, June 27, 2011). The regulations require NMFS to specify an ACL for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Epinephelus quernus*).

The Council's recommendation of an ACL of 346,000 lb (156,943 kg) considers the most recent bottomfish stock assessment, risk of overfishing, past fishery performance, recommendations from its Scientific and Statistical Committee (SSC), and input from the public. The proposed ACL is based on a 2010 stock assessment that indicated that the MHI Deep 7 bottomfish were not overfished and not subject to overfishing. The proposed ACL is associated with less than a 41 percent probability of overfishing the Deep 7 bottomfish in the MHI.

Management uncertainty, influenced by unreported recreational landings, accuracy of commercial catch reporting, weather influences on the fishing activity and productivity, monitoring and forecasting capabilities, and mortality of recreational catch discards associated with high-grading, could cause the fishery to exceed the ACL. Accordingly, the Council recommended a quota (annual catch target, ACT) of 325,000 lb (147,418 kg), about six percent (21,000 lb or 9,525 kg) lower than the ACL, to provide a sufficient buffer to ensure that the fishery does not exceed the ACL.

If the quota (ACT) is projected to be reached before August 31 (the end of the fishing year), NMFS will close the non-commercial and commercial fisheries for Deep 7 bottomfish in Federal waters through August 31. When NMFS closes Federal waters to fishing for Deep 7 bottomfish, State of Hawaii law allows the State to adopt a complementary closure of the Deep 7 fishery in State waters. During a closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish in the MHI, except as otherwise authorized by law. Specifically, fishing for, and the resultant possession or sale of, Deep 7

bottomfish by vessels legally registered to Pacific Remote Island Area bottomfish fishing permits, and conducted in compliance with all other laws and regulations, are not affected by the closure. There is no prohibition on fishing for or selling other non-Deep 7 bottomfish species throughout the year.

NMFS will consider public comments on the proposed ACL and quota (ACT) and will announce the final specifications prior to the scheduled reopening of the fishery on September 1, 2011. The fishery will continue until August 31, 2012, unless the fishery is closed earlier because the quota is reached. Regardless of the final ACL and quota, all other management measures will continue to apply in the MHI bottomfish fishery.

To be considered, comments on these proposed specifications must be received by August 18, 2011, not postmarked or otherwise transmitted by that date.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the Hawaii FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

#### **Certification of Finding of No Significant Impact on Substantial Number of Small Entities**

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities.

A description of the action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed specification.

“The proposed action would specify the annual catch limit (ACL) and accountability measures (AM) for MHI Deep 7 bottomfish for the non-commercial and commercial fisheries for 2011–12. In the 2010–11 fishing year (September 1, 2010, through March 12, 2011), 475 vessels engaged in the commercial harvest of MHI Deep 7 bottomfish. The 2010–11 average gross revenue per vessel was \$3,347, based on an average price of \$5.93 per pound, and harvest of 268,089 lb (121,603 kg). In general, the relative importance of MHI bottomfish to commercial participants as a percentage of overall fishing or household income is unknown, as the total suite of fishing and other income-generating activities by individual operations across the year has not been examined. Based on available information, NMFS has determined that all vessels in the current fishery are small entities under the Small Business Administration definition of a small entity, *i.e.*, they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of

operation, and have annual gross receipts not in excess of \$4 million. Therefore, there are no disproportionate economic impacts between large and small entities. Furthermore, there are no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

Assuming an average price of \$5.93 per lb and 475 participating vessels, the proposed 2011–12 ACL of 346,000 lb (156,943 kg) is expected to yield \$2,051,780 in total revenue, or an average of \$4,319 in revenue per vessel, compared to \$3,347 per vessel realized in the 2010–11 fishery. Even though there would be a substantial number of vessels, *i.e.*, 100 percent of the bottomfish fleet, affected by this specification, there would be no significantly adverse economic impact to individual vessels resulting from the implementation of this specification. Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), NMFS has determined that this rule will not have a significant economic impact on a substantial number of small entities.”

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866.

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

Dated: July 28, 2011.

**Eric C. Schwaab,**

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

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