

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 060724200-6200-01;I.D. 071106G]

RIN 0648-AT94

Fisheries in the Western Pacific; Western Pacific Bottomfish and Seamount Groundfish Fisheries; Guam Bottomfish Management Measures

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

ACTION: Proposed Rule; request for comments.

SUMMARY: This proposed rule would implement Amendment 9 to the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP), which would prohibit large vessels, i.e., those 50 ft (15.2 m) or longer, from fishing for bottomfish in Federal waters within 50 nm (92.6 km) around Guam, and would establish Federal permitting and reporting requirements for these large bottomfish fishing vessels. The proposed rule is intended to maintain viable bottomfish catch rates by small vessels in the fishery, to sustain participation by smaller vessels in the fishery, to maintain traditional patterns of the bottomfish supply to local Guam markets, and to provide for the collection of adequate fishery information for effective management.

DATES: Comments on the proposed rule must be received by September 22, 2006.

ADDRESSES: You may submit comments, identified by 0648-AT94, by any of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: AT94Guam@noaa.gov. Include 0648-AT94 in the subject line of the message.

- Mail or Hand Delivery: William L. Robinson, Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William L. Robinson (see **ADDRESSES**), or by e-mail to David_Rostker@omb.eop.gov, or faxed to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Robert Harman, NMFS PIR, 808-944-2271.

SUPPLEMENTARY INFORMATION: The bottomfish fishery operating in Federal waters around Guam is managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). Aside from restrictions on the use of certain destructive fishing methods that apply to the bottomfish fisheries throughout the western Pacific region, the bottomfish fishery in Federal waters around Guam is mostly unregulated at this time. Potential developments in the fishery, however, led the WPFMC to recommend the proposed management measures.

The Guam-based small-boat bottomfish fishery is a mix of subsistence, recreational, and limited commercial fishing, particularly in the summer months when weather conditions are calm. There are currently three primary sources of fisheries-dependent fisheries data for Guam: a boat-based and shoreline-based creel surveys conducted by staff of the Division of Aquatic and Wildlife Resources (DAWR), a voluntary fish dealer trip ticket invoice system coordinated by DAWR staff, and a voluntary data collection system established and coordinated by the Guam Fishermen's Cooperative with data submitted to and processed by DAWR staff.

The boat-based creel survey is a systematic random sampling of boat-based participation island-wide and creel intercept interviews at the three most frequently-used access points, namely Agana Boat Basin, Agat Marina, and Merizo Pier. Vessel launching ramps are available at each of these sites, but marina slippage is only available at the Agana and Agat sites. The vast majority of fishing activity on Guam occurs from vessels launched from trailers for single day trips and the vast majority of all charter fishing occurs out of Agana and Agat marinas.

Creel survey sampling frequency and methodology have fluctuated and have been modified slightly over the years as budgets, staff, and data requirements have changed, but have been fairly standard since the early 1980s. Sampling typically has been done on at least two week days and two weekend days each month, at each of the three listed ports, and interviews have been conducted for all fishing methods encountered. The charter fishery is sampled simultaneously with the small vessel fisheries, but the data are handled as a separate stratum within the data

processing and reporting systems. Sampling does not include the primarily foreign longline fleet operating out of the Apra Harbor commercial port, or the short-lived and now inactive larger vessel commercial bottomfish fishing ventures.

In general, data from the sampling programs are expanded to annual or quarterly estimates of catch, effort, and species composition by method of fishing. In recent years there have been about 10,000-13,000 boat-based fishing trips per year (CV <10%), with about one third of those using the bottom fishing method (shallow and deep combined). Estimated catches fluctuate even more, e.g., 400,000+ to 800,000+ lb with bottomfish catches being about 60,000-85,000 lb (CV <20%). As with all surveys, the more infrequent or rare an event, the lower the sample size, and the wider the estimated range of error.

The second type of data available for the Guam fisheries is based on a voluntary "trip ticket" invoice system created by the NMFS Western Pacific Fisheries Information Network (WPacFIN), Guam Division of Aquatic and Wildlife Resources (DAWR), and the Guam Fishermen's Cooperative (Coop) in the early 1980s. This system was designed to monitor the commercial sales of fish (purchases made directly from fishermen) by fish dealers, stores, and markets. The number of vendors participating in the program has fluctuated over the years as new vendors have come and gone, but the Coop has maintained its participation and dominance in volume of purchases throughout the time series. Invoices collected through this system record only the purchase of fish offered for sale to participating dealers, so do not reflect the purchases made by non-participating dealers, stores, etc., or the portions of catches retained by fishermen for consumption or other purposes. Over the years, the annual estimated percentage coverage of the total fish sales by Guam's fishermen that has been captured by the voluntary dealer reporting system has ranged from 55% to 90%.

The third and newest (about one year old) fisheries data collection system on Guam is a voluntary data collection system sponsored and primarily conducted by the Guam Fishermen's Coop in conjunction with WPacFIN, DAWR, and WPFMC staff. This project consists of two main data collection tools, one to collect vessel-level background fisheries participation data, and one to capture more detailed trip-level data on total catch, effort, species composition, and disposition of catch. All Coop members were asked to

participate. In addition, through a series of outreach efforts, non-members were also encouraged to participate whenever possible. The trip-level form collects very similar data to the DAWR creel survey interviews, except for individual fish lengths. When fishermen sell fish to the Coop, the invoice number is recorded on the trip form, as well as the details of catch not sold. Two of the main purposes of this data collection process are to augment the DAWR creel survey interviews and to better document total catch and effort by fishermen who sell portions of their catch. This data collection system is still in its infancy and should gain acceptance by a greater percentage of Guam's fishermen, especially for the non-Coop member fishing sector.

Based on the current FMP reporting and management requirements, these data collection programs can provide adequate information about Guam's inshore bottomfish fisheries that are conducted by smaller vessels. Thus, the proposed rule does not intend to establish additional data collection requirements on smaller vessels.

There is a potential component of Guam's bottomfish fishery in which fishermen in relatively large vessels (i.e., greater than 50 ft or 15.2 m in length) target deep-slope fish species, particularly onaga (longtail red snapper, or flame snapper, *Etelis coruscans*). This fishery is currently non-existent, but several vessels have operated in the past. The fish were caught on offshore banks in Federal waters, landed at Guam's commercial port, and rather than entering the local market, exported by air to foreign markets, especially Japan. The activity occurred on some or all of Guam's southern banks, including Galvez, 11-Mile, Santa Rosa, White Tuna, and Baby Banks. Most of the vessels fishing on these southern banks targeted the shallow-water bottomfish complex, but some targeted the deep-water complex. The banks to the north of Guam, including Rota Bank, and far to the west of Guam, including Bank A, appear not to have been fished at this time.

The potential for large-vessel bottomfish fishing activity to resume on the offshore banks prompted concerns about fishery information being inadequate for effective management, the potential for small-vessel catch rates to decline to non-viable levels, threats to sustained participation by smaller vessels in the fishery, and disruptions to traditional patterns of supply of bottomfish products to the local market.

This amendment has the following objectives:

- To ensure that adequate information is routinely collected for the large-vessel export-oriented bottomfish fishery taking place in Federal waters around Guam;
- To maintain adequate opportunities for small-scale commercial, recreational, and subsistence bottomfish fishermen in Federal waters around Guam;
- To provide for sustained community participation by smaller vessels in the Guam bottomfish fishery; and
- To encourage consistent availability of fresh, locally caught deepwater bottomfish products to Guam consumers.

After considering a wide range of management options, including many options suggested by the public during a public scoping process, the WPFMC analyzed the likely effects of four management alternatives, as follows:

1. No action;
2. Federal permits and logbook requirements for large vessels, i.e., 50 ft (15.2 m) or longer, that land bottomfish management unit species in Guam, and a closure of all Federal waters within 50 nm (92.6 km) of Guam to bottomfish fishing by large bottomfish vessels;
3. A landing limit for onaga of 250 lb (113.4 kg) per trip for fishing trips in Federal waters around Guam; and
4. A limited access program for the bottomfish fishery in Federal waters around Guam.

The WPFMC recommended to NMFS to implement the measures in preferred Alternative 2 (large vessel permits, reporting, and closed area). Alternative 2 is expected to maintain the opportunity for viable bottomfish catch rates for smaller vessels, sustained community participation by smaller vessels, and local supply of fresh bottomfish, but it would decrease the opportunity for large-scale vessels to harvest bottomfish at well-known banks and require them to search elsewhere for new bottomfish grounds. However, taking no action could lead to greatly reduced bottomfish populations and catch rates within the fishing range of Guam's small-vessel fleet if the large-vessel fishery and associated concerns were to develop. Economic, social, and cultural costs would be high for the small-vessel fishery, which does not have the range or capacity to travel to more distant seamounts to obtain higher bottomfish catch rates. The WPFMC rejected Alternative 1 (no action) because of the risks it brings in terms of maintaining viable bottomfish catch rates, providing for sustained community participation by smaller vessels in the fishery, and maintaining

a consistent availability of locally caught fish to the Guam market.

The WPFMC did not recommend Alternative 3 (250 lb or 113.4 kg trip limit for onaga) because, although it would likely help achieve the management objectives, it would encourage high-grading of onaga by fish quality, resulting in greater onaga bycatch than under other alternatives, and it might needlessly inhibit fishery efficiency in the waters beyond the range of small vessels of the Guam bottomfish fishery.

Alternative 4 (limited access program) would provide more complete fishery information than Alternative 2 (through vessel logbooks for all participants) and provide more finely-tuned and adjustable control over total bottomfish fishing effort and the distribution of fishing effort by vessel size. The WPFMC did not recommend Alternative 4, however, because its advantages would come at greater cost than Alternative 2, at least in the short term. These greater costs would include those associated with administration, enforcement, and monitoring, compliance on the part of fishery participants, and a likelihood of individuals being denied the opportunity to participate in the fishery. Given the problem being addressed, and that existing data collection programs can provide adequate information about Guam's inshore bottomfish fisheries that are conducted by smaller vessels, these costs do not appear to be justified at this time.

While Alternative 2 is expected to succeed in achieving the objectives of the action, it is difficult to predict to what extent. For example, it is possible that the type of fishery development this action is aimed at curbing (i.e., large-scale, export-oriented fishing) would take place on more or less the same scale under Alternative 2 (e.g., using vessels less than 50 ft or 15.2 m in length) as it would under the no-action scenario. In that case, further management action might be needed in the future if the large vessel fishery and associated concerns were to develop.

Public comments are being solicited on the FMP amendment through the end of the comment period stated in the Announcement of Availability. The Announcement of Availability was published on July 24, 2006 (71 FR 41770), and the comment period ends on September 22, 2006. Public comments on the proposed rule must be received by the end of the comment period on the FMP amendment, as published in the Announcement of Availability, to be considered in the approval/disapproval decision on the

amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period, not postmarked or otherwise transmitted by that date.

An Environmental Assessment (EA) was prepared for this amendment. Copies of the FMP, Amendment 9, and the EA, Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) may be obtained from William L. Robinson (see **ADDRESSES**).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements will be submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 30 min for a new permit application, and 5 min for completing a fishing logbook each day. Each estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated information technology. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to William L. Robinson (see **ADDRESSES**), by e-mail to David_Rostker@omb.eop.gov, or fax 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject

to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

An IRFA was prepared that describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of why the action is being considered, the objectives and legal basis for the action, and a description of the action, may be found at the beginning of this section.

The Small Business Administration defines a commercial fishing business as a small entity if annual gross receipts are less than \$4.0 million. All bottomfish vessels impacted by this rulemaking are considered to be small entities under this definition. Therefore, there are no economic impacts resulting from disproportionality between large and small vessels. A summary of the analysis follows.

Number of Affected Small Entities

The proposed alternative is expected to potentially impact as many as 1–3 bottomfish vessels of length greater than 50 ft (15.2 m) that have previously operated, but are not currently operating, in Federal waters within 50 nm (92.6 km) of Guam. Alternative 3, which would implement a trip limit on onaga, alternative 4, which would implement limited access, and the no-action alternative 1 would impact 100–300 bottomfish vessels operating in Federal waters around Guam, regardless of their size.

Duplicating, Overlapping, and Conflicting Federal Rules

To the extent practicable, it has been determined that there are no Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Effects of the Proposed Rule on Small Entities

All alternatives considered in this action would implement permitting, recordkeeping, and reporting requirements for vessels engaged in the fishery. Costs associated with obtaining permits and keeping and reporting information in logbooks would be minimal, as described below.

No-Action Alternative 1

The no-action alternative would be economically preferable to large vessels when compared to the proposed alternative, and would be economically preferable to all vessels when compared to alternative 3. However, because of the risks it brings in terms of maintaining viable bottomfish catch rates, providing for sustained participation by smaller vessels in the fishery, and maintaining a consistent availability of locally

caught fish to the Guam market, this alternative has been determined to not be consistent with National Standards 1, 4, and 8 of the Magnuson-Stevens Fishery Conservation and Fishery Management Act and was not chosen.

Proposed Alternative 2

Because data on costs and revenues for the large-vessel component of the fishery are not available, impacts to the profitability of the 1–3 vessels that could potentially be impacted by this rulemaking cannot be directly estimated. Implementation of the rule would require the affected vessels to search elsewhere for new bottomfish grounds, to relocate to the Northern Mariana Islands (NMI) to engage in deepwater trips for bottomfish at the islands and banks north of Saipan, or to change gear and enter another fishery. Regardless of their choice, it is likely that these vessels would experience adverse economic impacts in the form of reductions in potential profitability under this proposed rule. The extent of the impacts would depend on the opportunity costs of each individual vessel relative to the profits previously earned in the bottomfish fishery off of Guam.

Alternative 3

As in the case of the proposed alternative, without comprehensive information on vessel cost and revenues, the effects on individual vessel profitability from implementation of a 250-lb trip limit for onaga cannot be estimated with confidence. According to the Expanded Offshore Creel Survey in 2004, about 300–400 individual boats participated in the Guam bottomfish fishery, catching about 7,000 lb of onaga, and fisherman received an average price of just less than \$5.00/lb for onaga.

Trip limits would likely not have a beneficial economic impact on vessels engaged in this fishery, but the negative impact would vary among individual vessels depending upon their average catch of onaga and their overall profit margins from harvesting operations. If a vessel typically caught less than the trip limit, there would be no economic impact. However, if a vessel typically caught greater than the trip limit there would be an economic loss exacerbated by the added expense of culling and discarding the overage catch of onaga. Size of vessel is not an accurate basis to measure profit margins, i.e., it would not be correct to assume that smaller vessels have smaller profit margins and would be impacted to a greater extent than larger vessels from implementation of a trip limit.

Although a large proportion of the Guam bottomfish fishing fleet would be subject to the 250-pound trip limit on onaga, it would actually affect only a small proportion of the fleet. It would directly affect the fishing behavior of only those fishery participants that have both the capacity and the interest to land more than 250 lb of onaga during a single fishing trip. The precise number of entities capable of landing this amount of onaga is not known, but it is probably less than half of the 300 to 400 vessels that have reported BMUS landings in Guam in each of the last few years. Based on anecdotal reports that the members of the Guam Fishermen's Cooperative Association have agreed among themselves to land no more than 250 pounds of onaga per trip, the number of entities interested in landing this amount of onaga is probably no more than a few. These few "large commercial enterprises" probably overlap to a large extent with the "large-vessel" small entities that would be affected under Alternative 2.

Like Alternative 2, the 250-pound trip limit on onaga of Alternative 3 would constrain the ability of large commercial enterprises (rather than large vessels, per se) to operate in the Guam bottomfish fishery. The responses of directly affected small entities to the measure and the economic effects on them would therefore be of the same type as those described for Alternative 2. Which of the two alternatives would be more constraining in terms of the economic efficiency of fishing operations is not possible to predict. The trip limit would apply to fishing anywhere in the EEZ around Guam, not just within 50 nm of shore, so in that sense it would be more constraining than Alternative 2. It is not known whether Alternative 3 would result in the economic viability of any affected entities being put at substantial risk.

Alternative 4

For the reasons discussed above, profitability measures cannot be estimated for this alternative. Vessels that would not qualify for a limited access permit would face the same adverse economic impacts as those displaced from the fishery under the proposed alternative. By avoiding the adverse stock and crowding effects associated overcapitalized fisheries, those vessels that would qualify would be expected to benefit economically from this measure by maintaining or improving profitability in a stable economic environment.

The criteria that would be used to determine who and how many participants would be eligible for

permits have not been formulated, so it is not possible to rigorously predict how fishery participants would respond or how they would be affected. The limited access program would be designed in such a way as to achieve specified management objectives (success being subject to the availability of information needed for program design), presumably including those objectives already specified in the FMP. Given that FMP Objective 5 is to "maintain existing opportunities for rewarding experiences by small-scale commercial, recreational, and subsistence fishermen, including native Pacific islanders," the program would presumably be designed so as to minimize the adverse impacts on existing participants, particularly small-scale participants, possibly at the expense of large participants. Any short-term adverse economic effects of Alternative 4 would therefore probably be felt by largely the same entities as those that would be adversely affected under Alternatives 2 and 3, and their responses and the economic effects on them would therefore be of the same type as those described for Alternatives 2 and 3. Which of the three would be more constraining in terms of the economic efficiency of fishing operations is not known. It is not known whether Alternative 4 would result in the economic viability of any affected entities being put at substantial risk.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: August 8, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

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

2. In § 665.12, add the definition of "Guam bottomfish permit" and revise the definition of "Large vessel" as follows:

§ 665.12 Definitions.

* * * * *

Guam bottomfish permit means the permit required by § 665.61(a)(4) to use a large vessel to fish for, land, or

transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea of the bottomfish fishery management area.

* * * * *

Large vessel means, as used in §§ 665.22, 665.37, 665.38, 665.61, 665.62, and 665.70, any vessel equal to or greater than 50 ft (15.2 m) in length overall.

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3. In § 665.13, revise paragraph (f)(1) to read as follows:

§ 665.13 Permits and fees.

* * * * *

(f) Fees. (1) PIRO will not charge a fee for a permit issued under subpart D or F of this part, for a Ho'omalu Zone limited access permit, or for a Guam bottomfish permit issued under § 665.61.

* * * * *

4. In § 665.14, revise paragraph (a) to read as follows:

§ 650.14 Reporting and recordkeeping.

(a) Fishing record forms. The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 665.61(a)(4), 665.81, or 665.602 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hr after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Administrator within 72 hr of each landing of management unit species. Each form must be signed and dated by the fishing vessel operator.

* * * * *

5. In § 665.61, revise paragraph (a)(1) and add paragraph (a)(4) to read as follows:

§ 665.61 Permits.

(a) Applicability. (1) The owner of any vessel used to fish for bottomfish management unit species in the Northwestern Hawaiian Islands Subarea or Guam Subarea must have a permit issued under this section and the permit must be registered for use with the vessel.

* * * * *

(4) A fishing vessel of the United States must be registered for use under a Guam bottomfish permit if that vessel is a large vessel and is used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea

of the bottomfish fishery management area.

* * * * *

6. In § 665.62, add paragraphs (f), (g), and (h) to read as follows:

§ 665.62 Prohibitions.

* * * * *

(f) Use a large vessel that does not have a valid Guam bottomfish permit registered for use with that vessel to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea of the bottomfish fishery management area in violation of § 665.61(a).

(g) Use a large vessel to fish for bottomfish management unit species within the Guam large vessel bottomfish prohibited area, as defined in § 665.70(b).

(h) Land or transship, shoreward of the outer boundary of the Guam subarea of the bottomfish fishery management area, bottomfish management unit species that were harvested in violation of § 665.62(g).

7. Under subpart E, add a new § 665.70 to read as follows:

§ 665.70 Bottomfish fishery area management.

(a) Large vessel bottomfish prohibited area. A large vessel of the United States may not be used to fish for bottomfish management unit species in any large vessel bottomfish prohibited area as defined in paragraph (b) of this section.

(b) Guam large vessel bottomfish prohibited area (Area GU- 1). The large vessel bottomfish prohibited area around Guam means the waters of the US EEZ surrounding Guam that are

enclosed by straight lines connecting the following coordinates in the order listed:

| Point | N. lat. | W. long. |
|--------|-------------|--------------|
| GU-1-A | 14° 23' 43" | 144° 27' 36" |
| GU-1-B | 14° 10' | 144° 11' |
| GU-1-C | 13° 50' | 143° 52' |
| GU-1-D | 13° 17' | 143° 46' |
| GU-1-E | 12° 50' | 143° 54' |
| GU-1-F | 12° 30' | 144° 14' |
| GU-1-G | 12° 25' | 144° 51' |
| GU-1-H | 12° 35' | 144° 15' |
| GU-1-I | 12° 57' | 145° 33' |
| GU-1-J | 13° 12' | 145° 43' |
| GU-1-K | 13° 29'44" | 145° 48' 27" |
| GU-1-A | 14° 23' 43" | 144° 27' 36" |

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