

there has not been a large-scale directed fishery for this species in North Carolina. This prevents the meaningful quantification of current revenues that might be foregone as a result of the proposed action, as well as the identification and description of fishing entities that might desire to re-enter the fishery should the fishery reemerge in North Carolina in the future.

It should be emphasized that the proposed action would not directly affect any current fishing revenues or fishing practices because the medium mesh spiny dogfish gillnet fishery in North Carolina has not operated since the May 26, 2006, implementation of the BDTRP, nor in any substantive manner since 2000. Instead, the proposed continuation of the nighttime fishing prohibition would have an effect only if a directed spiny dogfish fishery reemerges in North Carolina because of changes in FMP actions. In that case, the proposed action would reduce potential medium mesh gillnet fishing opportunities by limiting soak times, and would limit the redevelopment and prosecution of a fishery that, prior to the FMPs and BDTRP, contributed a relatively minor share of fishing revenues to the fishery participants.

NMFS considered two alternatives for the proposed action. The first alternative, the status quo, would continue current restrictions until May 26, 2009, when the medium mesh gillnet prohibitions in North Carolina would expire. This alternative would allow increased soak times associated with the directed spiny dogfish fishery and associated revenues, if FMP actions allow for the reemergence of a directed fishery in North Carolina. However, this alternative would not prevent future incidental mortality and serious injury to dolphins from extended soak time of medium mesh commercial gillnet gear, and, therefore, would not meet the objectives of the BDTRP. The second alternative, the proposed action, would continue, without modification, current nighttime medium mesh gillnet restrictions in North Carolina state waters during the winter for an additional three years (until May 26, 2012). This alternative is a consensus recommendation of the BDTRT and would achieve the BDTRP's objectives, as mandated by the MMPA, by continuing to reduce serious injuries and mortalities of dolphins incidental to commercial gillnet fishing.

**References**

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NMFS. Personal Communication. National Marine Fisheries Service, Fisheries Statistic Division, Silver Spring, MD.

NMFS. 2007. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2006. U.S. Department of Commerce. NOAA Technical Memorandum NMFS-NE–201.

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Rossmann, M. and D. Palka. 2004. A Review of Coastal Bottlenose Dolphin Bycatch Mortality Estimates in Relation to the Potential Effectiveness of the Proposed BDTRP. Prepared by NMFS-NEFSC for the BDTRT. BDTRT document number 1–13–05f.

**List of Subjects in 50 CFR Part 229**

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 18, 2008.

**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 229 is proposed to be amended as follows:

**PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972**

1. The authority citation for part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*; § 220.32(f) also issued under 16 U.S.C. 1531 *et seq.*

2. In § 229.35 paragraphs (d)(4)(ii) and (d)(5)(i) are revised to read as follows:

**§ 229.35 Bottlenose Dolphin Take Reduction Plan.**

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

\* \* \* \* \*

(5) \* \* \*

(i) *Medium Mesh Gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

\* \* \* \* \*

[FR Doc. E8–19580 Filed 8–21–08; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

[Docket No. 070719388–81094–02]

RIN 0648–AV29

**Fisheries in the Western Pacific; Crustacean Fisheries; Deepwater Shrimp**

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

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

**SUMMARY:** This proposed rule would designate deepwater shrimp of the genus *Heterocarpus* as management unit species (MUS), and require Federal permits and data reporting for deepwater shrimp fishing in Federal waters of the western Pacific. The proposed rule is intended to improve information on deepwater shrimp

fisheries and their ecosystem impacts, and to provide a basis for future management of the fisheries, if needed.

**DATES:** Comments on the proposed rule must be received by October 6, 2008.

**ADDRESSES:** Comments on this proposed rule, identified by 0648-AV29, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov); or

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

Instructions: All comments received are a part of the public record and will generally be posted to

[www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "NA" in the required name and organization 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.

Copies of the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (FMP), and proposed FMP Amendment 13, which includes an environmental assessment (EA), are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

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, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Brett Wiedoff, NMFS PIR, 808-944-2272.

**SUPPLEMENTARY INFORMATION:** This Federal Register document is accessible at the Office of the Federal Register website: [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr).

Crustacean fisheries in the western Pacific are federally-managed within the waters of the U.S. Exclusive Economic Zone (EEZ) around American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Hawaii, and the Pacific Remote Island Areas

(PRIA, comprising Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll). The EEZ around the CNMI and PRIA extends from the shoreline seaward to 200 nautical miles (nm), and the EEZ around the other islands extends from three to 200 nm offshore. Currently, the crustaceans FMP management unit species include the spiny lobsters *Panulirus marginatus* and *P. penicillatus*, slipper lobsters of the family Scyllaridae, and Kona (spanner) crab, *Ranina ranina*.

Eight species of the deepwater shrimp genus *Heterocarpus* have been reported throughout the tropical Pacific, generally at depths of 200 to 1,200 meters on the outer reef slopes that surround islands and deepwater banks. Species distribution tends to be stratified by depth with some overlap. The deepwater trap fisheries have primarily targeted *Heterocarpus ensifer* and *H. laevigatus*.

Western Pacific commercial trap fisheries for deepwater shrimp are intermittent. There have been sporadic operations in Hawaii since the 1960s, small-scale fisheries in Guam during the 1970s, and some activity in the CNMI during the mid-1990s. The fisheries have been unregulated, and there has been no comprehensive collection of information about the fisheries. Most of these fishing ventures have been short-lived, probably as a result of sometimes-frequent loss of traps, a shrimp product with a short shelf life and history of inconsistent quality, and the rapid localized depletion of deepwater shrimp stocks leading to low catch rates. Despite these hurdles, interest in deepwater shrimp fisheries continues.

Amendment 13 would designate deepwater shrimp of the genus *Heterocarpus* as management unit species under the FMP, and would require Federal permits and reporting for deepwater shrimp fishing in the U.S. EEZ. The proposed monitoring program (permits and logbooks) is intended to improve understanding of these fisheries and their impact on marine ecosystems. Although currently there are no resource concerns regarding western Pacific deepwater shrimp, the proposed designation of these shrimp as management unit species would provide a basis for management of the fisheries, if warranted in the future.

In addition to the proposed rule, Amendment 13 designates Essential Fish Habitat (EFH) for *Heterocarpus* spp. as required under the Magnuson-Stevens Act. To reduce the complexity and the number of EFH identifications required for each individual species and

life stages of the genus *Heterocarpus* in the western Pacific, EFH has been designated for the complete assemblage of adult and juvenile *Heterocarpus* spp. as the outer reef slopes between 300 and 700 meters surrounding every island and submerged banks in the western Pacific. The species complex designations includes all eight species of deepwater shrimp extant in the western Pacific (*Heterocarpus ensifer*, *H. laevigatus*, *H. sibogae*, *H. gibbosus*, *H. Lepidus*, *H. dorsalis*, *H. tricarinatus* and *H. longirostris*).

In addition to adding deepwater shrimp to the management unit, this proposed rule would reorganize some existing regulations relating to the Northwestern Hawaiian Islands (NWHI) lobster limited access permit program. These regulations, now in paragraphs § 665.41(a)(1), (a)(3), (a)(4), and 665.41(d), would be consolidated into paragraph § 665.41(d). The regulations would also clarify that the harvest of crustacean management unit species within the NWHI Marine National Monument is subject to the requirements of 50 CFR part 404.

To be considered, comments must be received by close of business on October 6, 2008, not postmarked or otherwise transmitted by that date.

In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on proposed FMP Amendment 13 through October 14, 2008 as stated in the Notice of Availability published on August 14, 2008 (50 CFR Part 665). Public comments on this proposed rule, if received by October 14, 2008, will also be considered in the approval/disapproval decision for Amendment 13. Comments received after that date will not be considered in the approval/disapproval decision for Amendment 13, but will be considered for this proposed rule.

#### Classification

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

Amendment 13 includes an EA that discusses the impacts on the environment as a result of this rule. The purpose and need for the proposed action is to establish appropriate monitoring and management mechanisms for the domestic harvest of western Pacific deepwater shrimp. Based on the information in the EA, as

compared to the no-action alternative, the preferred alternative would have no adverse impacts to essential fish habitat or habitat areas of particular concern. None of the action alternatives would be expected to change the impacts of U.S. vessels on deepwater shrimp resources in the short term, but impacts on the resource base could increase with higher future effort, so increasing fishery managers' understanding of the status of the stocks and fishing mortality would be an important outcome of this action. By including deepwater shrimp as management unit species, the foundation would be established for implementing control measures, should they become necessary. None of the action alternatives is anticipated to have any significant adverse impacts on seabird, sea turtle, or marine mammal populations because the fishery has a relatively low level of participation, and there have been no observed or reported interactions with protected resources in the deepwater shrimp fishery. The preferred alternative would provide for the sustained participation of fishing communities by helping to ensure the long-term availability of western Pacific deepwater shrimp. The complete analysis of the alternatives is contained in Amendment 13, including an EA, and is not repeated here. Copies of the environmental analytical documents is available from the Council (see **ADDRESSES**).

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, 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 this action are contained in the preamble to the proposed rule. This rule does not duplicate, overlap, or conflict with other Federal rules. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the NMFS Pacific Islands Regional Office has determined that this rule will not have a significant economic impact on a substantial number of small entities based on the pre-existing status of deepwater shrimp fisheries within the U.S. EEZ of the western Pacific. All vessels having the potential to participate in this fishery are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of \$ 4.0 million, independently owned and operated, and not dominant in the field). While fishing for deepwater shrimp has been sporadic over the

last several decades, in 1984, a total of 17 vessels reported catching approximately 159 tons of deepwater shrimp worth an estimated ex-vessel value of \$780,000. More recent information is not possible because confidentiality rules restrict the release of information from the small number of participants.

Alternative 1 (no action) would preclude Federal monitoring and management of known deepwater shrimp fisheries operating within the western Pacific. Alternative 2 would include deepwater shrimp as management unit species (MUS) under the Crustaceans FMP, enabling the Council and NMFS to develop management measures, as appropriate, for deepwater shrimp fisheries in the region. Alternative 3 would add deepwater shrimp to the MUS, as in Alternative 2, and would also require Federal permitting and reporting of harvest for vessels engaged in the deepwater shrimp fishery.

Alternatives 1 and 2 would yield no economic impact to small entities (vessels). However, Alternative 3 would have a slightly adverse economic impact resulting in a requirement to pay a vessel permit fee of approximately \$30. Applied on a 1984 dollar base, this represents only 0.06 percent of the average boat revenue for 1984. Alternative 3 represents the most adverse economic impact of the 3 alternatives. However, the fishery cannot be monitored and managed under the requirements of the Magnuson-Stevens Act, particularly National Standards 1 and 2, without accurate and reliable data on shrimp effort and production associated with required permitting, recordkeeping and reporting from the directed deepwater shrimp.

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

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The preferred alternative would require the owners of U.S. vessels that fish for deepwater shrimp management unit species in the western Pacific to obtain Federal fishing permits, and the vessel operators would be required to complete and submit Federal catch reports. Permit eligibility would not be restricted in any way, and the permit would be renewable on an annual basis.

NMFS anticipates that initial permit applications would require 0.5 hours per applicant, with renewals requiring an additional 0.5 hours annually. It is estimated that NMFS may receive and process up to 10 permit applications each year. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at five (5) hours per year. The cost for individual Federal permits has not been determined, but would represent only

the administrative cost and is anticipated to be approximately \$30 per permit.

NMFS anticipates the time requirement to complete Federal catch reports to be approximately 10 minutes per vessel per fishing day. Assuming that 10 vessels fish during up to 100 days per year, the total collection-of-information burden estimate for fishing data reporting is estimated at 167 hours per year.

Public comment is sought regarding: whether this proposed collection of information is 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 collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see **ADDRESSES**), and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### 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 18, 2008.

**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 50 CFR part 665 continues to read as follows:

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

2. In § 665.12, revise the definition of "Crustaceans management unit species" to read as follows:

#### **§ 665.12 Definitions.**

\* \* \* \* \*

Crustaceans management unit species means the following crustaceans:

Common Name	Scientific Name
Spiny lobsters	Panulirus marginatus
Slipper lobsters	P. penicillatus
Kona crab	family Scyllaridae
Deepwater shrimp	Ranina ranina
	Heterocarpus spp.

\* \* \* \* \*

3. In § 665.13, revise paragraphs (f)(2)(i) through (f)(2)(v), and add a new paragraph (f)(2)(vi) to read as follows:

**§ 665.13 Permits and fees.**

\* \* \* \* \*

- (f) Fees. \* \* \*
- (2) \* \* \*
- (i) Hawaii longline limited access permit.
- (ii) Mau Zone limited access permit.
- (iii) Coral reef ecosystem special permit.
- (iv) American Samoa longline limited access permit.
- (v) Main Hawaiian Islands non-commercial bottomfish permit.

(vi) Crustaceans permit.

\* \* \* \* \*

4. In § 665.41, revise paragraphs (a) and (d) to read as follows:

**§ 665.41 Permits.**

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

(2) The owner of any vessel used to fish for lobster in Crustaceans Permit Areas 2, 3, or 4 must have a permit issued for that vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustaceans Permit Areas 1, 2, 3, or 4 must have a permit issued for that vessel.

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

\* \* \* \* \*

(d) Lobster Limited Access Permit Requirements.

(1) A lobster limited access permit is valid for fishing only in Crustaceans 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.

\* \* \* \* \*

5. In § 665.42, add a new paragraph (c) to read as follows.

**§ 665.42 Prohibitions.**

\* \* \* \* \*

(c) In any Crustaceans Permit Area, it is unlawful for any person to:

(1) Fish for, take, or retain deepwater shrimp without a permit issued under § 665.41.

(2) Falsify or fail to make, keep, maintain, or submit Federal reports and records of harvests of deepwater shrimp as required under § 665.14.

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