

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the July 1–September 14 directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: September 14, 2009.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 0908131233–91275–02]

RIN 0648–XQ14

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; 2009–10 Main Hawaiian Islands Bottomfish Total Allowable Catch

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

ACTION: Final specification.

SUMMARY: NMFS specifies a total allowable catch (TAC) of 254,050 lb

(115,235 kg) of Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2009–10 fishing year.

DATES: This final specification is effective October 23, 2009.

ADDRESSES: Copies of the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP) and related Environmental Impact Statement 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.

An environmental assessment (EA), was prepared that describes the impact on the human environment that would result from this action. Based on the environmental impact analysis presented in the EA, NMFS prepared a finding of no significant impact (FONSI). Copies of the EA and FONSI are available from www.regulations.gov, the Council, or William L. Robinson, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

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

SUPPLEMENTARY INFORMATION: This final specification is also accessible at www.gpoaccess.gov/fr.

NMFS specifies a TAC for the 2009–10 fishing year of 254,050 lb (115,235 kg) of Deep 7 bottomfish in the MHI, as recommended by the Council, based on the best available scientific, commercial, and other information, taking into account the associated risk of overfishing.

The MHI Management Subarea refers to the portion of U.S. Exclusive Economic Zone around the Hawaiian Archipelago lying to the east of 161° 20' W. long. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*).

When the TAC is projected to be reached, NMFS will close the non-commercial and commercial Deep 7 bottomfish fisheries until the end of the fishing year (August 31, 2010). During a fishery 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 Mau Zone, Ho omalu Zone, or Pacific Remote Island Areas 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.

All other management measures continue to apply in the MHI bottomfish fishery. The MHI bottomfish fishery reopened on September 1, 2009, and will continue until August 31, 2010, unless the fishery is closed prior to August 31 as a result of the TAC being reached.

Additional background information on this final specification may be found in the preamble to the proposed specification published on August 24, 2009 (74 FR 42641), and is not repeated here.

Comments and Responses

On August 24, 2009, NMFS published a proposed specification and request for public comments on the MHI bottomfish TAC (74 FR 42641). The comment period ended on September 8, 2009. NMFS did not receive any public comments.

Classification

The Regional Administrator, NMFS PIR, determined that this final specification is necessary for the conservation and management of the MHI bottomfish fishery, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

This action is exempt from review under Executive Order 12866.

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

Dated: September 17, 2009.

James W. Balsiger,
Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

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