

Executive Order and the associated Presidential Memorandum, the Agency's environmental justice policies promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Specially, EPA's simultaneous limited approval and limited disapproval of Rules 361 and 333 would have the effect of strengthening environmental requirements throughout SBCAPCD, and would not relax environmental requirements in any area.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 21, 2010.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2010-18889 Filed 7-30-10; 8:45 am]

**BILLING CODE 6560-50-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 100630283-0300-01]

RIN 0648-XX15

#### Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; 2010-11 Main Hawaiian Islands Bottomfish Total Allowable Catch

**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 total allowable catch (TAC) for the 2010-11 fishing year of 254,050 lb

(115,235 kg) of Deep 7 bottomfish in the main Hawaiian Islands (MHI). The TAC would be set in accordance with regulations established to support long-term sustainability of Hawaii bottomfish.

**DATES:** Comments must be received by August 17, 2010.

**ADDRESSES:** Comments on this proposed specification, identified by 0648-XX15, 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:** Mail written comments to Michael D. Tosatto, Acting Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

**Instructions:** Comments must be submitted to one of these 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. Comments will be posted for public viewing after the comment period has closed. 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 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.

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

**FOR FURTHER INFORMATION CONTACT:** Bob Harman, NMFS PIR Sustainable Fisheries, 808-944-2271.

**SUPPLEMENTARY INFORMATION:** This **Federal Register** document is available at [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr).

The bottomfish fishery in Federal waters around Hawaii is managed under the Hawaii fishery ecosystem plan

(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, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). Regulations governing bottomfish fishing by U.S. vessels in accordance with the Hawaii FEP appear at 50 CFR part 665 and subpart H of 50 CFR part 600. Currently, bottomfish stocks in the Hawaiian Archipelago are not experiencing overfishing, and efforts to minimize localized stock depletion in the MHI Management Subarea are precautionary. The MHI Management Subarea refers to the portion of the U.S. Exclusive Economic Zone around the Hawaiian Archipelago lying to the east of 161° 20' W. long.

Pursuant to regulations at 50 CFR 665.211, NMFS must specify a TAC for Deep 7 bottomfish in the MHI for each fishing year (September 1 through August 31), based on a recommendation from the Council, considering the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing. 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*).

NMFS uses commercial landings data to project the date when the TAC for the year will be reached, and closes the non-commercial and commercial fisheries from that date until the end of the fishing year. 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 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.

For the 2009-10 fishing year, the TAC was 254,050 lb (115,235 kg) (74 FR 48422; September 23, 2009). Monitoring of the commercial fishery indicated that the TAC for the 2009-10 fishing year was projected to be reached by April 20, 2010, and, in accordance with the regulations at § 665.211, NMFS published a temporary rule closing the non-commercial and commercial MHI bottomfish fisheries on April 20, 2010 (75 FR 17070; April 5, 2010). Subsequent analyses indicated that the 2009-10 bottomfish fishery took

208,412 lb (94,534 kg). The fishery is scheduled to re-open on September 1, 2010.

At its 148th meeting in Honolulu, Hawaii, held from June 28 - July 1, 2010, the Council reviewed information about the bottomfish fishery, including a 2008 stock assessment that was updated in 2009 by the NMFS Pacific Islands Fisheries Science Center (PIFSC). After considering the status of stocks, risks of overfishing, recommendations from the Council's Science and Statistical Committee and input from the public, the Council recommended a TAC of 254,050 lb (115,235 kg). The proposed TAC is associated with a zero percent risk of overfishing of Hawaiian archipelagic bottomfish stocks. The risk of localized depletion (or excess fishing mortality) of the MHI management subarea bottomfish stocks is estimated to be in the range of 33 to 38 percent. The most recent stock assessment assumed that the entire 2009–10 TAC would be caught, but because the 2009–10 fishery took less than the TAC, the associated risk of localized depletion with the 2010–11 TAC should be even less than 33 to 38 percent. These risk levels are more conservative than the 50 percent risk threshold allowed under the Magnuson-Stevens Act.

NMFS will consider the Council's recommendation, potential environmental and economic effects of the proposed TAC, and comments received during the public comment period for this proposed specification, and will announce the final TAC specification in the **Federal Register**. To be considered, comments on this proposed specification must be received by August 17, 2010, not postmarked or otherwise transmitted by that date.

Regardless of the final TAC specification, all other management measures will continue to apply in the MHI bottomfish fishery. The MHI bottomfish fishery is scheduled to re-open on September 1, 2010, and will continue until August 31, 2011, unless the fishery is closed prior to August 31 as a result of the TAC being reached.

#### **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 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 this proposed specification. In the 2009–10 fishing year (September 1, 2009, through April 20, 2010), 451 vessels engaged in the commercial harvest of MHI bottomfish. The 2009–10 average gross revenue per vessel was \$3,147, based on an average price of \$6.81 per lb, and harvest of 208,412 lb. 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. The majority of the 451 vessels comprising the affected

universe were under 30 ft (9.1 m) in length overall.

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 \$6.81 per lb and 451 participating vessels, the proposed 2010–11 TAC of 254,050 lb is expected to yield \$1,730,080 in total revenue, or an average of \$3,836 in revenue per vessel, compared to \$3,147 per vessel realized in the 2009–10 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, 2010.

**John Oliver,**

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

[FR Doc. 2010–18919 Filed 7–30–10; 8:45 am]

**BILLING CODE 3510–22–S**