

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

[Docket No. 211217–0263]

RIN 0648–BK90

Pacific Island Fisheries; 2022–2025 Annual Catch Limits and Accountability Measures for Main Hawaiian Islands Uku (Gray Jobfish)

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement an annual catch limit (ACL) of 295,419 lb (134 metric tons (t)), an annual catch target (ACT) of 291,010 lb (132 t), and accountability measures (AM) for main Hawaiian Islands (MHI) uku for fishing years 2022, 2023, 2024, and 2025. These ACLs and ACTs apply to the total combined commercial and non-commercial catch of uku. As an in-season accountability measure, if NMFS projects that the total catch will reach the ACT in any given fishing year, we would close commercial and non-commercial uku fisheries in Federal waters for the remainder of the fishing year. As a post-season AM, if NMFS determines that the most recent three-year average total catch exceeded the ACL in a fishing year, we would reduce the ACL and ACT for the following fishing year by the amount of the overage. The proposed rule supports the long-term sustainability of MHI uku.

DATES: NMFS must receive comments by January 26, 2022.

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA–NMFS–2021–0088, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2021–0088 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be

considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council (Council) and NMFS prepared an environmental assessment (EA) that supports this proposed rule. The EA is available at www.regulations.gov, or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, or www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: David O’Brien, NMFS PIRO Sustainable Fisheries, 808–725–5038.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the MHI uku fishery in Federal waters around Hawaii under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP), as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations at 50 CFR 665.4 require NMFS to specify an ACL, and optionally specify an ACT, for MHI uku each fishing year based on a recommendation from the Council. The specification of an ACT reduces the likelihood that the ACL will be exceeded.

The Council, at its September 2021 meeting, recommended that NMFS implement the proposed ACLs, ACTs, and AMs for MHI uku for 2022, 2023, 2024, and 2025. The fishing year for MHI uku is the calendar year. The Council recommended the proposed ACL of 295,419 lb (134 t) and ACT of 291,010 lb (132 t) based on a 2020 MHI uku stock assessment, in consideration of the risk of overfishing, past fishery performance, the acceptable biological catch recommendation from its Scientific and Statistical Committee, and with opportunity for public input.

The 2020 stock assessment found that the MHI uku stock is healthy and estimated the overfishing limit to be 302,033 lb (137 t), assuming four years of identical catch in 2022, 2023, 2024, and 2025. This new overfishing limit is the first time the limit has been specified for total catch. Previous stock assessments and overfishing limits for MHI uku considered commercial catch only. The proposed ACLs and ACTs are associated with up to a 41 and 36 percent probability of overfishing,

respectively, for each proposed fishing year. Both are more conservative than the 50 percent risk threshold allowed under NMFS guidelines for Magnuson-Stevens Act National Standard 1 requiring that fishery management measures prevent overfishing.

NMFS monitors MHI uku catches based on data provided by commercial fishermen to the State of Hawaii, and by non-commercial fishermen to the State of Hawaii and NMFS. As an in-season AM, if NMFS projects that total catch will reach the ACT, we would close Federal waters to the commercial and non-commercial fisheries for MHI uku for the remainder of the fishing year. As a post-season AM, if NMFS determines that the most recent three-year average MHI uku total catch exceeds the ACL in any given year, NMFS would reduce the ACL and ACT for the subsequent fishing year by the amount of the overage with a subsequent rulemaking.

The combined commercial and non-commercial fishery has only caught more than the proposed ACT one year in the past 11 years (2012), suggesting there is a roughly one in three chance the fishery will reach the ACT in one or more years specified in this proposed rule. If the fishery was to reach the ACT requiring closure of Federal waters, we expect it would be late in the year and have minor impacts to the fishery. We do not anticipate changes to the fishery that would result in significant environmental impacts.

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading, not postmarked or otherwise transmitted by that date. Regardless of the final rule, all other management measures will continue to apply in the fisheries.

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 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 the attached proposed rule, issued under the authority of the Magnuson-Stevens Act, will not have a significant

economic impact on a substantial number of small entities.

The proposed action would implement an ACL of 295,419 lb (134 t), an ACT of 291,010 lb (132 t), and both in-season and post-season AM for uku in the U.S. Exclusive Economic Zone around the MHI for fishing years 2022, 2023, 2024, and 2025.

Uku caught by commercial and non-commercial fishermen would all count toward the ACL and ACT under this action. This would include catch by anyone who is required to report catch to State or Federal agencies. As a result, this action would apply to hundreds of small entities across Hawaii who would potentially participate in the MHI uku fishery. On average over the last five years, commercial fishermen reported 92,902 lb (42.1 t) of uku caught, and sold 85,641 lb (38.8 t) (92.2 percent) for \$412,790. Based on information collected by the State of Hawaii and NMFS, the five-year annual average of commercial and non-commercial uku catch was 218,874 lb (99.3 t). NMFS estimates that all participants in this fishery are small entities.

NMFS and the Council will monitor commercial and non-commercial uku catches relative to the ACL and ACT. As an in-season AM, NMFS will close Federal waters to uku retention in any fishery when we project combined commercial and non-commercial catches will reach the ACT. As a post-season AM, if NMFS determines that the average combined commercial and non-commercial catch estimates from the most recent three years exceeded the ACL, we would reduce the ACL and ACT for the following year by an amount equal to the overage.

NMFS implemented an ACL of 127,205 lb (57.7 t) for MHI uku as a single species stock starting in 2019, 2020, and 2021, which only applied to catch in the commercial fishery. The Council recommended that non-commercial catch estimates be incorporated into uku management beginning in 2022. In the 11 years from 2010 through 2020, the combined total catch of uku in commercial and non-commercial fisheries exceeded the proposed 2022–2025 ACT and ACL only once (in 2012) when total uku catch was 323,182 lb (147 t). At no point during 2010–2020 did the three-year combined average uku catch reach the proposed ACL. The most recent three years of combined commercial and non-commercial uku catches were 238,272 lb (108 t), 228,562 lb (104 t), and 218,254 lb (100 t) in 2018, 2019, and 2020, respectively.

Given the catch history, there is roughly a one in three chance that the

combined total fishery catch will reach the ACT at least once during the 2022–2025 period, which would result in an in-season closure in Federal waters. If NMFS projects the ACT to be reached in a given year, we would close Federal waters to uku retention through a **Federal Register** notice. In the event that NMFS needs to reduce an ACL and ACT because the fishery three-year average catch exceeded the ACL, we would also implement the modified ACL and ACT through a **Federal Register** notice. If the fishery is projected to reach the ACT resulting in an in-season closure of Federal waters, we anticipate that it would occur near the end of the year. Fishermen could continue to fish for other species in Federal waters and for uku—both commercially and non-commercially—in State waters. All uku caught in State waters after a closure in Federal waters would still count toward the total catch for that year relative to the post-season AM.

The lack of a concurrent uku fishery closure in State waters may make enforcement of the Federal waters closure more difficult because, without an enforcement officer observing the catch locations, it would be impossible to know if an uku was caught in Federal or State waters. Even so, NMFS has utilized an in-season closure as an AM in the Hawaii Deep 7 bottomfish fishery since 2007, and enforced its closure when the fishery reached its catch limit in each of 2007–2010. Under all alternatives, if the MHI uku fishery were closed in Federal waters, the NOAA Office of Law Enforcement and the U.S. Coast Guard would be responsible for enforcing the closure. The boundary between State and Federal waters is easily determined using the Global Positioning System.

Regardless, the combination of total uku catch history, past level of uku catch in Federal waters, any closure likely occurring at the end of the season, and any uku catch after a Federal closure being counted toward the ACL, indicates that limitations on enforcement of the Federal closure will have limited negative effects on the management of the fishery. For the same reasons, even though this proposed action would apply to a substantial number of vessels, it should not result in significant adverse economic impact to individual vessels.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411)

is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all affected entities are small entities, *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 gross receipts not in excess of \$11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

For most of the fisheries subject to this proposed action, fishermen would be able to fish throughout the entire year. The ACLs, as proposed, would not change the gear type, areas fished, effort, or participation of the fisheries during the fishing years under consideration. The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations, or government jurisdictions. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to 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 proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains no information requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits, Bottomfish, Fisheries, Fishing, Hawaii, Pacific Islands.

Dated: December 17, 2021.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 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 § 665.211, revise the section heading and paragraphs (a) and (b), redesignate paragraph (e) as paragraph (f), and add a new paragraph (e).

The revisions and addition read as follows:

§ 665.211 Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

(a) In accordance with § 665.4, the ACLs and ACTs for MHI bottomfish fisheries for each fishing year are as follows:

Fishery	2018–19 ACL (lb)	2019–20 ACL (lb)	2020–21 ACL (lb)
Deep 7 bottomfish	492,000	492,000	492,000

Fishery	2022 ACL (lb)	2023 ACL (lb)	2024 ACL (lb)	2025 ACL (lb)
Uku	295,419	295,419	295,419	295,419

Fishery	2022 ACT (lb)	2023 ACT (lb)	2024 ACT (lb)	2025 ACT (lb)
Uku	291,010	291,010	291,010	291,010

(b) When a bottomfish ACL or ACT is projected to be reached based on analyses of available information, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed beginning at a

specified date, which is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the ACL or ACT is reached.

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(e) If the average total landings of uku in the most recent three years exceed

the specified ACL in a fishing year, the Regional Administrator will reduce the uku ACL and ACT for the subsequent year by the amount of the overage in a separate rulemaking.

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