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Dated: September 5, 2006.

**David M. Verhey,***Acting Assistant Secretary for Fish and Wildlife and Parks.*

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

[Docket No. 060606149-6234-02; I.D. 052506A]

RIN 0648-AT95

**Fisheries in the Western Pacific; Omnibus Amendment for the Bottomfish and Seamount Groundfish Fisheries, Crustacean Fisheries, and Precious Coral Fisheries****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend three fishery management plans (FMPs) to include fisheries and waters around the Commonwealth of the Northern Mariana Islands (CNMI) and Pacific Remote Island Areas (PRIA). These amendments affect United States domestic fisheries that offload or operate in Federal waters around the CNMI and the PRIA. These amendments establish new permitting and reporting requirements for vessel operators targeting bottomfish species around the PRIA to improve understanding of the ecology of these species and the activities and harvests of the vessel operators that target them. They also establish new permitting and reporting requirements for vessel operators targeting crustacean species and precious corals around the CNMI and PRIA.

**DATES:** This final rule is effective October 12, 2006, except for amendments to §§ 665.14, 665.41, and 665.61, which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

**ADDRESSES:** Copies of the FMP amendments and Environmental Assessment (EA) may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (WPFMC), 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, or from the web site [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 rule may be submitted to William L. Robinson, Regional Administrator, Pacific Islands Region (PIR), NMFS, 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814, or to David Rostker, OMB, by e-mail [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to 202-395-7285.

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

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This **Federal Register** document is also accessible via the Internet at the web site of the Office of the Federal Register: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

## Background

The NMFS Pacific Islands Region encompasses Federal waters, i.e., the U.S. Exclusive Economic Zone (EEZ), around the Territories of Guam and American Samoa, the State of Hawaii, the CNMI, and the PRIA. The EEZ extends from the inner boundary of the EEZ, i.e., the seaward limit of each coastal state, commonwealth, territory, and possession, to 200 nautical miles (nm) offshore. For the CNMI and PRIA, the inner boundary of the EEZ is the shoreline, and for Guam, American Samoa, and Hawaii, the inner boundary of the EEZ is 3 nm from the shoreline.

The Federal waters surrounding the CNMI are currently not included in the Fishery Management Plans for the Bottomfish, Crustaceans, or Precious Corals Fisheries of the Western Pacific Region (Bottomfish FMP, Crustaceans FMP, and Precious Corals FMP). Similarly, Federal waters surrounding the PRIA are not included in the Bottomfish or Crustaceans FMPs. Vessels have been known to fish for bottomfish and crustaceans in the Federal waters around the CNMI and PRIA, although on a small scale. While there are currently no known fisheries operating in the PRIA, and no precious corals fisheries operating in the CNMI, interest may arise in the future. This rule amends the FMPs to include fisheries operating in these areas under the FMPs. This rule is designed to establish monitoring systems and management mechanisms to implement specific regulatory controls should the need arise; specific management measures (such as time and area closures, or effort and landing limits) are not included.

Additional background information on this final rule may be found in the preamble to the proposed rule (71 FR 36049) published on June 23, 2005, and is not repeated here.

## Comments and Responses

On June 7, 2006, NMFS published in the **Federal Register** a notice of availability of the subject FMP amendments (71 FR 32911), and on June 23, 2006, NMFS published the proposed rule that would implement the amendments (71 FR 36049). The public comment period ended on August 7, 2006. NMFS received one comment on the proposed rule, as follows:

*Comment.* The US Fish and Wildlife Service (USFWS) recommended the addition of regulatory text to clarify the management authority over commercial fisheries in refuge waters within the PRIA.

*Response.* The preamble to the proposed rule states that the USFWS

governs fishing activities within refuges, including those in the western Pacific, pursuant to the National Wildlife Refuge System Administration Act (NWRSA) of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and other authorities. Refuge waters are closed to all uses until they are specifically opened for such uses, and that the USFWS determines whether to open refuge waters for any use that is compatible with the refuges' primary purpose(s) and mission. While commercial fishing is generally prohibited in refuge waters, specific regulations are absent. Including refuge areas under the Bottomfish, Crustaceans, and Precious Corals FMPs will add specific regulations to these areas, but these regulations will not supersede any valid existing Federal regulations that are more restrictive to fishing operations. NMFS believes that the preamble language recognizes the authority of the USFWS, and adequately addresses the USFWS comments.

## Changes to the Proposed Rule

In the proposed rule, instruction 5 would have added at § 665.42 a paragraph to make it unlawful for any person to refuse to make available, to an authorized officer or employee of NMFS designated by the Regional Administrator for inspection and copying, any records that must be made available in accordance with § 665.14(f)(2). This proposed addition would have duplicated an existing prohibition at § 665.15(e), and was deemed unnecessary. Accordingly, that instruction was removed from the final rule.

In the proposed rule, instruction 7 would have revised § 665.69, paragraph (b), to define the inner boundary of each new fishery management area. Although the inner boundary of the PRIA was described in the preamble to the proposed rule as being the shoreline, this definition was inadvertently omitted in the regulatory instructions. Accordingly, instruction 7 was edited to include the inner boundary of the PRIA in § 665.69(b).

## Classification

The Assistant Administrator, NMFS, determined that the three FMP amendments are necessary for the conservation and management of the affected fisheries, and that the amendments are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

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, or on the economic impact of the rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains amendments to collection-of-information requirements subject to the PRA under OMB control numbers 0648-0214 and 0648-0490. The amendments to these collection of information requirements have not yet been approved by OMB, but OMB approval is expected no later than November 13, 2006. NMFS will publish a notice when these requirements are cleared by OMB and are, therefore, effective (see **DATES**). The public reporting burden for the permit application process is 30 min per application. In the crustaceans fishery, it is estimated that two permit applications will be submitted annually for the permit area, resulting in a paperwork burden of 1 hr/yr. In the bottomfish fishery, it is estimated that no more than five permit applications will be received annually for the permit area, resulting in a paperwork burden of 2.5 hr/yr. In the precious corals fishery, it is estimated that one permit will be applied for annually for the permit area, resulting in 30 min/yr in paperwork burden. Therefore, the total paperwork burden of these collections of information will be no more than four hours annually. The public burden for the proposed reporting requirements is 5 min per daily logsheet. It is estimated that up to eight vessels will be subject to the reporting requirement at any given time, and that each vessel will fish, on average, no more than 50 days/yr, resulting in a total paperwork burden of approximately 35 hr/yr. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson, NMFS PIR (see **ADDRESSES**), or 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: September 7, 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 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, the definitions for "Crustaceans management area", "Crustaceans permit area 3", and "Crustaceans receiving vessel" are revised, the definitions of "Crustaceans permit area 4", "Pacific Remote Island Areas bottomfish fishing permit", and "Pacific Remote Island Areas crustacean fishing permit" are added, and under the definition of "Precious coral permit area" paragraph (4)(v) is added to read as follows:

§ 665.12 Definitions.

\* \* \* \* \*

Crustaceans management area means the EEZ waters around American Samoa, the CNMI, Guam, Hawaii, and the PRIA.

\* \* \* \* \*

Crustaceans Permit Area 3 (Permit Area 3) means the EEZ around Guam and American Samoa, and the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

Crustaceans Permit Area 4 (Permit Area 4) means the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

\* \* \* \* \*

Crustaceans receiving vessel means a vessel of the United States to which lobsters taken in the crustaceans management area are transferred from another vessel.

\* \* \* \* \*

Pacific Remote Island Areas (PRIA) bottomfish fishing permit means the permit required by § 665.61 to use a

vessel to fish for bottomfish management unit species (MUS) in the EEZ around the PRIA, or to land bottomfish MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

Pacific Remote Island Areas (PRIA) crustacean fishing permit means the permit required by § 665.41 to use a vessel to fish for crustacean management unit species (MUS) in the EEZ around the PRIA, or to land crustacean MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

\* \* \* \* \*

Precious coral permit area \* \* \*

(4) \* \* \*

(v) Permit Area X-P-CNMI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

\* \* \* \* \*

3. In § 665.14, paragraph (a) is revised to read as follows:

§ 665.14 Reporting and recordkeeping.

(a) Fishing record forms. The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 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. Each form must be signed and dated by the fishing vessel operator. For the fisheries managed under § 665.21, 665.41, and 665.81, 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 MUS, unless the fishing was authorized under a PRIA troll and handline permit, a PRIA crustaceans fishing permit, or a PRIA precious corals fishing permit, in which case the original logbook form for each day of fishing within the PRIA EEZ waters must be submitted to the Regional Administrator within 30 days of each landing of MUS. For fisheries managed under § 665.602, the original logbook form for each day of the fishing trip must be submitted to the Regional Administrator within 30 days of each landing of MUS.

\* \* \* \* \*

4. In § 665.41, paragraph (a)(2) is revised to read as follows:

§ 665.41 Permits.

(a) \* \* \*

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

\* \* \* \* \*

5. In § 665.61, paragraph (a)(1) is revised to read as follows:

§ 665.61 Permits.

(a) \* \* \*

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

\* \* \* \* \*

6. In § 665.62 paragraph (b) is revised, and paragraph (f) is added to read as follows:

§ 665.62 Prohibitions.

\* \* \* \* \*

(b) Fish for, or retain on board a vessel, bottomfish management unit species in the Ho'omalulu Zone, the Mau Zone, or the Pacific Remote Island Areas without the appropriate permit registered for use with that vessel issued under § 665.13.

\* \* \* \* \*

(f) Falsify or fail to make or file all reports of bottomfish management unit species landings taken in the Pacific Remote Island Areas, containing all data in the exact manner, as specified in § 665.14(a).

7. In § 665.69, paragraphs (a) introductory text, (b), and (c) are revised, and paragraphs (a)(6), (a)(7), and (a)(8) are added, to read as follows:

§ 665.69 Management subareas.

(a) The bottomfish fishery management area is divided into eight subareas with the following designations and boundaries:

\* \* \* \* \*

(6) CNMI Inshore Area means that portion of the EEZ shoreward of 3 nautical miles of the shoreline of the CNMI.

(7) CNMI Offshore Area means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(8) Pacific Remote Island Areas means that portion of the EEZ seaward of the Pacific Remote Island Areas, with the exception of Midway Atoll.

(b) The inner boundary of each fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, the Territory of Guam, the CNMI, and the PRIA.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is

measured, or is coterminous with adjacent international maritime boundaries. The boundary between the fishery management areas of Guam and the CNMI extends to those points which

are equidistant between Guam and the island of Rota in the CNMI.

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