

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 060427113-6113-01]

RIN 0648-XA16

**Fisheries Off West Coast States and in the Western Pacific; Modifications of the West Coast Commercial Salmon Fishery**

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

**ACTION:** Modification of fishing seasons, landing and possession limits; request for comments.

**SUMMARY:** NOAA Fisheries announces that the commercial fishery in the area from Cape Falcon, Oregon to the Oregon/California border and in the area from Horse Mountain to Point Arena, California was modified by two inseason actions. Inseason action #1 modified the previously scheduled open period in the area from Cape Falcon, Oregon to the Oregon/California border. This action also modified the open dates in the area from Horse Mountain to Point Arena, California. Inseason action #2 increased the landing and possession limit in the Fort Bragg subarea from April 23-27. All other restrictions and regulations remained in effect as announced for the 2006 Ocean Salmon Fisheries and previous inseason actions.

**DATES:** Inseason action #1, in the area from Cape Falcon, Oregon to the Oregon/California border was effective from 0001 hours local time (l.t.) Tuesday, April 10, 2007, through 2359 hours l.t., Sunday, April 29, 2007. Inseason action #1 in the area from Horse Mountain to Point Arena, California was effective 0001 hours l.t. on April 9-13, 16-20, and 23-27 and remained open until the close of the last open period at 2350 l.t. Friday, April 27, 2007. Inseason action #2 in the area from Horse Mountain to Point Arena California was effective 0001 hours l.t. Monday April 23 through 2359 l.t. Friday April 27.

After this time the fisheries remained closed until reopened subject to the 2007 management measures and regulations which were announced, and published in the **Federal Register** (72 FR 24539, May 3, 2007).

Comments will be accepted through May 29, 2007.

**ADDRESSES:** Comments on these actions must be mailed to D. Robert Lohn,

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070; or faxed to 206-526-6376. Comments can also be submitted via e-mail at the 2007salmonIA1.nwr@noaa.gov address, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include [0648-XA16] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Sarah McAvinchey 206-526-4323.

**SUPPLEMENTARY INFORMATION:** In the 2006 annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), NMFS announced the commercial fisheries in the area from Cape Falcon, Oregon to the Oregon/California border and from Horse Mountain to Point Arena, California. The 2006 management measures listed a March 15, 2007, opening date for the Newport, Coos Bay, Oregon Klamath Management Zone (KMZ) and Fort Bragg areas unless modified at the March 2007 Council meeting. The Newport, Coos Bay and Oregon KMZ subareas had fishing regulations that stated fishing was for all salmon except coho, with a 28-inch (71.1-cm) total length Chinook minimum size limit. The Fort Bragg area had the same requirements except that the Chinook total length minimum size limit was 27 inches (68.6 cm).

On March 8, 2007, for Inseason action #1 and April 20, 2007 for Inseason action #2 the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Oregon Department of Fish and Wildlife and California Department of Fish and Game. Information related to catch to date, 2007 projections, Chinook and coho catch rates, and effort data were reported. Inseason action #1 was taken because the data indicated that the lower abundance projections warranted shortening the fishing season from what was announced in the 2006 regulations. By reducing the open period and moving the opening date of the fishery to April the Council limited the fishery in these areas in order to provide more opportunity later in the 2007 season. Inseason action #2 was taken because adequate quota remained and an increase in the landing and possession limit from 20 fish per vessel per day to 30 fish per vessel per day would afford more fishing opportunity.

As a result, on March 8, 2007, the states recommended, and the RA concurred, that effective from Tuesday, April 10 to Sunday, April 29 in the area from Cape Falcon, Oregon, to the Oregon/California border the fishery would be open for all salmon except coho, with a 100-fish per vessel per calendar week (Sunday through Saturday) landing and possession limit, with a requirement that fish caught in the area must be landed in the State of Oregon. The RA also concurred that in the area from Horse Mountain to Point Arena, California, the fishery would be open April 9-13, 16-20, and 23-27 for all salmon, except coho, with a 2000-fish total quota. For this area there was also a 20-fish per day per vessel landing and possession limit and a requirement that fish caught in the area must be landed in the area. Subsequently, on April 20, 2007, the states recommended and the RA concurred that in the area from Horse Mountain to Point Arena, California, the landing and possession limit was 30 fish per vessel per day. These actions were necessary to conform to the 2006 management goals. The intended effect was to allow the fishery to operate within the seasons and quotas specified in the 2006 annual management measures and provide more harvest opportunity during the 2007 season. Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. These actions do not apply to other fisheries that may be operating in other areas.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and

radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30-day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would limit fishers appropriately controlled access to available fish during the scheduled fishing season by unnecessarily restricting the fishery. These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: May 9, 2007.

**James P. Burgess,**

*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. 070418089-7089-01; I.D. 040507G]

RIN 0648-AV49

#### Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Closed Season

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

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

**SUMMARY:** This interim rule closes Federal waters in the main Hawaiian Islands to commercial and recreational fishing for seven deepwater bottomfish species during May 15 through September 30, 2007. This action is intended to immediately address

overfishing for these species in the Hawaiian Archipelago while a long-term management program is developed for the bottomfish multi-species complex.

**DATES:** Effective 12:01 a.m. (0001 hrs) Hawaii-Aleutian Standard Time (HST) on May 15, 2007, until 11:59 p.m. (2359 hrs) HST on September 30, 2007. Comments must be received on or before June 13, 2007.

**ADDRESSES:** You may submit comments, identified by "0648-AV49" by any of the following methods:

- E-mail: [AV49Bottomfish@noaa.gov](mailto:AV49Bottomfish@noaa.gov). Include "AV49" in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a file size of 10 megabytes.

- Federal e-Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

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

In accordance with NEPA, an Environmental Assessment (EA) was prepared for this interim action, and is available from William L. Robinson (see **ADDRESSES**).

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

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This interim rule is accessible via the World Wide Web at the Office of the **Federal Register's** web site [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

##### Background

Bottomfish in Hawaii are managed according to the Fishery Management Plan for Bottomfish and Seamount Groundfish in the Western Pacific Region (Bottomfish FMP), which was 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 (Magnuson-Stevens Act). Hawaii bottomfish are managed as a single archipelagic-wide multi-species stock complex (bottomfish complex). The bottomfish complex comprises certain deep-slope snappers, groupers, and jacks. Fisheries and management programs for Hawaiian bottomfish occur in two large geographic areas, the Northwestern Hawaiian Islands (NWHI) and the main Hawaiian Islands (MHI).

Pursuant to Presidential Proclamation 8031 (June 15, 2006), commercial fishing in the area of the NWHI that is encompassed by the Papahānaumokuākea Marine National Monument is limited to the eight valid Federal

bottomfish permits effective on June 15, 2006. Bottomfish landings under these permits are limited to 350,000 lb (158,757 kg) annually, and may continue until June 15, 2011.

Regulations codifying the terms of the Proclamation are found at 50 CFR 400.10. Regulations governing bottomfish fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and subpart E of 50 CFR part 665.

NMFS, on behalf of the Secretary of Commerce, determined that overfishing was occurring on the bottomfish complex around the Hawaiian Archipelago, with the primary problem being excess fishing effort in the MHI. On May 27, 2005, NMFS requested the Council to take appropriate action to end overfishing (70 FR 34452, June 14, 2005).

About 300 commercial vessels participate in the MHI bottomfish fishery, and recreational vessels are estimated at over 1,000. Fishermen use hooks and lines to target bottomfish over deep bottom slopes. Fishing trips are usually a day or less, and most fishermen participate in both bottomfish and pelagic (e.g., troll) fisheries. Except for a few full-time commercial bottomfish fishermen, most fish for bottomfish no more than 60 days a year. Many fishermen who fish for recreation also sell part of their catch to offset fishing expenses, making the distinction between recreational and commercial activities difficult. The total 2003 ex-vessel revenue from commercial bottomfish fishing in the MHI was an estimated \$1,460,000 for landings of 273,000 lb (123,831 kg). Data from the MHI commercial fishery are collected through the State of Hawaii commercial fishing report program. There is no data reporting requirement for recreational fishing; recreational data are collected through surveys.

Based on 2003 data, NMFS had estimated that fishing mortality needed to be decreased by 15 percent from 2003 levels in the MHI to end overfishing in the Hawaiian Archipelago. Accordingly, the Council began preparation of an amendment to the Bottomfish FMP that would have proposed prohibiting recreational and commercial fishermen from fishing for seven deep-water bottomfish management unit species in Federal waters of Hawaii's Penguin Bank and Middle Bank. Historically, those areas represented 16-20 percent of MHI bottomfish landings, and would have ended the overfishing. The deep-water species are onaga *Etelis coruscans*, ehu *E. carbunculus*, gindai *Pristipomoides zonatus*, kalekale *P. sieboldii*, opakapaka *P. filamentosus*,