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Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No.0808191118–81120–01]

RIN 0648–AX19

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Main Hawaiian Islands Bottomfish; Delay of Fishery Opening

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

ACTION: Temporary rule for emergency action; delay of fishery opening; request for comments.

SUMMARY: NMFS is delaying until November 15, 2008, the opening of the commercial and non-commercial fisheries in the main Hawaiian Islands (MHI) for seven deepwater bottomfish species (“Deep 7” bottomfish). This emergency rule to delay the fishery opening is necessary to prevent overfishing and ensure that regulations specifying the total allowable catch (TAC) are based on the best available scientific information. This emergency rule is also necessary to complement State of Hawaii regulations that will delay the opening of the fishery in State waters, thereby preventing confusion by the public caused by conflicting Federal and State regulations, and minimizing any resulting enforcement difficulties for the State.

DATES: This emergency rule is effective August 22, 2008 through November 14, 2008.

Comments on this emergency rule must be received by September 11, 2008.

ADDRESSES: Comments on this rule, identified by 0648–AX19, 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; or
- Mail: Mail written comments to William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to 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 “N/A” 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.

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

SUPPLEMENTARY INFORMATION: The bottomfish fishery in Federal waters around Hawaii is managed under the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), 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). Regulations governing bottomfish fishing by U.S. vessels in accordance with the Bottomfish FMP appear at 50 CFR part 665 and at subpart H of 50 CFR part 600.

On April 4, 2008, NMFS published a final rule (73 FR 18457) that implemented Amendment 14 to the Bottomfish FMP to end the overfishing of bottomfish in the Hawaiian Archipelago. The regulations established by Amendment 14 at § 665.72 authorize NMFS to set an annual TAC limit for Deep 7 bottomfish, as recommended by the Council and based on 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 hapu’upu’u (*Epinephelus quernus*). The fishery is monitored using information reported by holders of State commercial marine licenses (State CML) through monthly

catch reports submitted to the State. Beginning with the 2008–09 MHI bottomfish fishing year, fish catch and effort information from non-commercial fishermen who fish for bottomfish in Federal waters around Hawaii are obtained through a Federal logbook program administered by NMFS. This information is used in combination with the State catch reports to monitor the annual TAC.

When the TAC for the year is projected to be reached, NMFS is required to publish notification that the fishery will be closed beginning on a specified date until the end of the fishing year in which the TAC is reached. During the closure, no person may fish for, possess, or sell any Deep 7 bottomfish 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.

For the 2007–08 fishing year, the TAC was established by the Council at 178,000 lb (80,739 kg) (73 FR 18718, April 7, 2008). Monitoring of the fishery indicated that the MHI bottomfish fishery harvested the TAC in April 2008. In accordance with regulation § 665.72, and as a result of reaching the TAC, NMFS published a temporary rule closing the fishery on April 16, 2008 (April 7, 2008; 73 FR 18717), and a related correction notice (73 FR 20001; April 14, 2008). The fishery is scheduled to reopen on September 1, 2008, the date the temporary rule expires.

The Council held its 142nd meeting in Honolulu in June 2008. At that meeting, the Council learned that additional data had been obtained for the fishery and that the new data were integral to the analysis by NMFS to update the bottomfish stock assessment. An updated stock assessment provides the best scientific basis upon which the Council can make its recommendation on a TAC. Inasmuch as an updated bottomfish stock assessment was not available at the June meeting, the Council was not able to recommend a TAC in accordance with the best scientific information available, as required by regulation § 665.72(a) and Magnuson-Stevens Act National Standard 2. The new stock assessment is to be available before the Council’s next meeting in October 2008.

Accordingly, the Council, by majority vote, recommended that NMFS delay the opening of the fishery until November 15, 2008.

NMFS has been informed that the State will be taking action to extend the temporary closure to bottomfish fishing in State waters around the MHI from August 31 until November 14, 2008, and is expecting NMFS to do the same for Federal waters.

This delay in opening the fishery is necessary to prevent overfishing of Hawaiian bottomfish. From 1990–2004, annual commercial landings of Deep 7 bottomfish caught in Federal waters of the MHI ranged from approximately 29,000 to 81,000 lb (13,154 to 36,741 kg). The catch during September and October of each year during the same period ranged from 27,000 to 62,000 lb (12,247 to 28,123 kg), representing 13 to 24 percent of the Deep 7 species landed annually by commercial fishermen from Federal waters.

The potential contribution of the catch from Federal waters to overfishing of Hawaiian bottomfish is clear when one considers the relative portion of landings from Federal waters to the total Deep 7 bottomfish landings from both State and Federal waters. Annually, the landings from Federal waters during 1990–2004 comprised 12 to 25 percent of the total MHI landings. September landings from Federal waters made up 6 to 24 percent of the MHI total, and October landings comprised 10 to 28 percent of the total. Non-commercial landings of Deep 7 bottomfish are currently unknown, but they certainly add to the mortality of Deep 7 bottomfish, and are believed to be substantial.

Thus, in the absence of a TAC, any fishing for Deep 7 bottomfish during September and October could potentially worsen overfishing in the MHI. The delay in opening the fishery is necessary to prevent overfishing in, and preserve sustainable management of, the bottomfish fishery, based on the best scientific information available. Without the emergency rule to delay the opening, a TAC cannot be published that would be consistent with Magnuson-Stevens Act National Standard 1 (preventing overfishing) and National Standard 2 (being based on the best available scientific information). To allow the fishery to open without a TAC would, moreover, be contrary to existing management regulations intended to end bottomfish overfishing, create extreme confusion among the public, and affect the joint effort of the Council, NMFS, and the State in addressing the overfishing condition of bottomfish complex in the MHI. In addition, the

inconsistency between State and Federal regulations would seriously compromise the State's enforcement abilities to extend the closure of the Deep 7 bottomfish fishery in State waters until mid-November 2008.

Classification

NMFS is developing an environmental assessment (EA) for a proposed and final rule on TAC alternatives for the 2008–09 fishing year. The EA will be made available to the public for comment before the Council's meeting in October 2008, with sufficient time for the public comments to be considered by the Council, prior to the Council recommending a TAC for the 2008–09 fishing year, and in conjunction with the updated stock assessment.

Pursuant to authority set forth at U.S.C. 553(b)(B), the Assistant Administrator Fisheries, NOAA, (AA) finds it is contrary to the public interest to provide for prior notice and an opportunity for public comment. Fishing for Deep 7 bottomfish without an established TAC could worsen overfishing in the MHI. A TAC cannot be published that would be consistent with Magnuson-Stevens Act National Standards 1 and 2, so the emergency rule is necessary to delay the opening of the fishery from September 1, 2008, to November 15, 2008. Fishery statistics indicate that the amount of bottomfish harvested in Federal waters, alone, during September and October could reach 50 percent of the previous TAC. Based on preliminary information, the TAC for the 2008–09 fishing year may be reduced, and if fishing continues at historical levels during September and October on a much-reduced TAC, overfishing is likely to result, absent a delay of the opening.

Similarly, the need to implement these measures in a timely manner to delay of the opening of the Deep 7 bottomfish fishery to prevent overfishing, reduce confusion among the public, and minimize inconsistency between State and Federal regulations, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. The impact to fishermen of this temporary closure is minimal because closing the fishery upon reaching the TAC is intended to benefit the fishery by ending overfishing and providing sustainable bottomfish resources. Bottomfish fishermen typically fish for non-Deep 7 bottomfish (in addition to the Deep 7 bottomfish that is temporarily closed) and also participate in troll fishing for pelagic species. These other fisheries are not affected by the

closure, so fishermen are provided alternative fishery opportunities during the closure for Deep 7 bottomfish.

Accordingly, this emergency temporary rule will be effective upon filing for publication at the Office of the Federal Register. Public comments on the emergency closure will be accepted for 15 days after publication of this emergency rule in the **Federal Register**.

Pursuant to the authority set contained in 5 U.S.C. 603, this emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment. Accordingly, no regulatory flexibility analysis is required, and none was prepared.

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

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 22, 2008.

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 reads as follows:

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

■ 2. In § 665.62, suspend paragraphs (l) and (m) and add paragraphs (o) and (p) to read as follows:

§ 665.62 Prohibitions.

* * * * *

(o) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.71, in the Main Hawaiian Islands Management Subarea after a closure of the fishery, in violation of §§ 665.72, 665.74, or 665.75.

(p) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in § 665.71, after a closure of the fishery, in violation of §§ 665.72, 665.74, or 665.75.

■ 3. Under subpart E, add a new § 665.75 to read as follows:

§ 665.75 Closed season.

(a) All fishing for, or possession of, any Hawaii Restricted Bottomfish

Species as specified in § 665.71, is prohibited in the Main Hawaiian Islands Management Subarea during September 1, 2008, through November 14, 2008, inclusive. All such species possessed in the Main Hawaiian Islands Management Subarea are presumed to have been taken and retained from that Subarea,

unless otherwise demonstrated by the person in possession of those species.

(b) Hawaii Restricted Bottomfish Species, as specified in § 665.71, may not be sold or offered for sale during September 1, 2008, through November 14, 2008, inclusive, except as otherwise authorized by law.

(c) Fishing for, and the resultant possession or sale of, Hawaii Restricted

Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalau Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from paragraphs (a) and (b).

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