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(c) *Reservation of Rights.* The terms of this clause shall not be construed to limit the Government's rights or remedies under any other contract clause.

(End of clause)]

[FR Doc. 2010-21358 Filed 8-27-10; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 100618274-0377-01]

RIN 0648-AY92

Fisheries in the Western Pacific; Hawaii Bottomfish and Seamount Groundfish; Management Measures for Hancock Seamounts to Rebuild Overfished Armorhead

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would continue a moratorium on fishing for bottomfish and seamount groundfish at the Hancock Seamounts until the overfished U.S. stock of pelagic armorhead (*Pseudopentaceros wheeleri*) is rebuilt. This proposed rule would also reclassify the management area around the Hancock Seamounts as an ecosystem management area. The intent of the continued moratorium is to facilitate rebuilding of the armorhead stock, and the intent of the ecosystem management area is to facilitate research on armorhead and other seamount groundfish.

DATES: Comments on the amendment must be received by October 14, 2010.

ADDRESSES: Comments on the proposed rule, identified by 0648-AY92, 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 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 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.

Amendment 2 to the Fishery Ecosystem Plan for the Hawaiian Archipelago contains an environmental assessment and background information, and is available from www.regulations.gov and from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or web site www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808-944-2108.

SUPPLEMENTARY INFORMATION: This document is also available at www.gpoaccess.gov/fr.

Fishing for pelagic armorhead is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP). Armorhead are overfished as a result of over-exploitation by foreign vessels in international waters, dating back to at least the 1970s. Although there has never been a U.S. fishery targeting this fish, continued exploitation outside the U.S. Exclusive Economic Zone (EEZ) by foreign fleets has kept the stock in an overfished condition.

The Hancock Seamounts are the only known armorhead habitat within the EEZ. These seamounts lie west of 180° W. and north of 28° N., to the northwest of Kure Atoll in the Northwestern Hawaiian Islands. The Council and NMFS have responded to the overfished condition of armorhead with a series of

four, 6-year domestic fishing moratoria at the Hancock Seamounts, beginning in 1986. The current 6-year moratorium expires on August 31, 2010. Although there would be a short time period between the expiration of the current moratorium and implementation of this rule, if approved, the likelihood of a new Hawaii-based domestic armorhead fishery developing is discountable. The Hancock Seamounts are a relatively small and isolated fishing area, and the costs of starting up fishing operations to enter this fishery would be prohibitive relative to the potential fishing yield during the very short time that the area would be open. Additionally, existing domestic North Pacific trawl vessels would not be allowed to fish at Hancock Seamounts because trawls are prohibited fishing gear in the U.S. Pacific Islands.

From July 2009 to August 2010, the Council developed Amendment 2 to the Hawaii FEP to rebuild the armorhead stock pursuant to the Magnuson-Stevens Act; the amendment is currently undergoing Secretarial review (75 FR 51237, August 19, 2010). The Council recommended in Amendment 2 that NMFS establish a minimum rebuilding time of 35 years for the U.S. portion of the armorhead stock. The Council also recommended that NMFS classify the portion of the EEZ surrounding the Hancock Seamounts as an ecosystem management area, and extend the moratorium at Hancock Seamounts until the stock is rebuilt. In response to these recommendations, NMFS developed this proposed rule to implement the latter two recommendations.

The Council and NMFS recognize that, because less than five percent of the armorhead habitat lies within U.S. jurisdiction, rebuilding of the stock must be accomplished through coordinated international management. Nonetheless, a prohibition on all armorhead catches in U.S. waters would provide the maximum protection available for armorhead stocks in U.S. waters.

The current moratorium applies to all bottomfish and seamount groundfish, and the proposed moratorium would continue to do so. While only armorhead are overfished, other bottomfish and seamount groundfish are caught with the same gear type as armorhead. Opening the Hancock Seamount fishery to non-armorhead fish would increase the likelihood of incidental catches of armorhead, resulting in possible delays to rebuilding the stock. In addition, the fishing gear (anchors, weighted lines, and hooks) used to target non-armorhead fish, or lost on fishing

grounds, has the potential to impact armorhead essential fish habitat and habitat areas of particular concern. For these reasons, all bottomfish and seamount groundfish have been included in past fishing moratoria at Hancock Seamounts, and are also included in this proposed rule.

NMFS anticipates that further research will be necessary for the Regional Administrator to determine when armorhead stocks are rebuilt and could support a domestic fishery. Specifically, research must be conducted to obtain better information about armorhead life history, ecological information such as food-web dynamics and essential fish habitat, population dynamics, and fishery-independent information at the population level. Additionally, the Council has identified the need for habitat mapping and characterization, and fish distribution and abundance by habitat types. This information is necessary to determine whether the status of the stock could support a domestic fishery at Hancock Seamounts in the future.

Classifying the portion of the EEZ around the Hancock Seamounts as an ecosystem management area would acknowledge the significance of the area as a monitoring and research site for ecological studies on armorhead and other bottomfish and seamount groundfish and their associated benthic habitats. The ecosystem management area would also serve as the area in which the maximum U.S. contribution to rebuilding of the armorhead stock would occur. Hancock Seamounts could also serve as a control site for future research that assesses the effectiveness of management actions being considered by other nations and regional fishery management organizations, such as seasonal closures and bank-specific closures in international waters adjacent to Hancock Seamounts.

Additional information and analyses may be found in Amendment 2, available from the Council (see **ADDRESSES**).

To be considered, comments on this proposed rule must be received by October 14, 2010, not postmarked or otherwise transmitted by that date.

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 fishery ecosystem plan for Hawaii, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

Pelagic armorhead (*Pseudopentaceros wheeleri*) is a management unit species under the Fishery Ecosystem Plan for the Hawaiian Archipelago. Armorhead are overfished as a result of over-exploitation by foreign vessels in international waters. There has never been a U.S. fishery targeting this fish, but continued exploitation by foreign fleets has kept the stock in an overfished condition. The Western Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) have responded to the overfished condition of armorhead with a series of four, 6-year domestic fishing moratoria, beginning in 1986, around the Hancock Seamounts. These seamounts are the only known armorhead habitat in the U.S. Exclusive Economic Zone (EEZ). The current 6-year moratorium expires on August 31, 2010.

The Council developed Amendment 2 to the Hawaii fishery ecosystem plan to establish rebuilding requirements pursuant to Magnuson-Stevens Act section 304(e)(4). Amendment 2 would: (1) continue a moratorium on fishing for armorhead and other bottomfish and seamount groundfish until the armorhead stock is rebuilt; (2) establish a minimum rebuilding time of 35 years for the U.S. portion of the armorhead stock; and (3) classify the portion of the EEZ around the Hancock Seamounts as an ecosystem management area.

The fishing moratorium continues to apply to all bottomfish and seamount groundfish. While only armorhead are overfished, other bottomfish and seamount groundfish are caught with the same gear type as armorhead. Thus, opening the fishery to non-armorhead fish increases the likelihood of incidental catches of armorhead, resulting in possible delays to rebuilding the stock. In addition, the fishing gear (anchors, weighted lines, and hooks) used to target non-armorhead fish, or lost on fishing grounds, may impact armorhead essential fish habitat and habitat areas of particular concern. For these reasons, all bottomfish and seamount groundfish have been included in the fishing moratoriums at Hancock Seamounts in the past, and are also included in this action. The intent of the continued moratorium and minimum rebuilding time is to facilitate rebuilding of the armorhead stock, and the intent of the ecosystem management area is to facilitate research on armorhead and other seamount groundfish. 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 rule.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules. All fishing vessels having the potential to participate in this fishery are considered to

be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of \$ 4.0 million). There are no additional small entities that could be affected by this proposed rulemaking.

There has never been any U.S. fishery at Hancock Seamounts, nor has there been any recent interest in starting one, so this proposed rule would not affect the profitability of fishing businesses under Federal management. Therefore, there are no disproportionate economic impacts from this proposed rule based on home port, gear type, or relative vessel size. For these reasons, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, based on the pre-existing status of U.S. fishery for armorhead and other bottomfish and seamount groundfish at Hancock Seamounts.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 665

Armorhead, Bottomfish, Fisheries, Fishing, Hancock Seamounts, Hawaii, Seamount groundfish.

Dated: August 24, 2010.

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 proposed to be 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 § 665.202, revise paragraph (a)(3) to read as follows:

§ 665.202 Management subareas.

* * * * *

(3) Hancock Seamounts Ecosystem Management Area means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180° W. long. and north of 28° N. lat.

* * * * *

3. In § 665.204, add new paragraph (k) to read as follows:

§ 665.204 Prohibitions.

* * * * *

(k) Fish for or possess any Hawaii bottomfish or seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area, in violation of § 665.209.

4. Revise § 665.209 to read as follows:

§ 665.209 Fishing moratorium at Hancock Seamounts.

Fishing for, and possession of, Hawaii bottomfish and seamount groundfish

MUS in the Hancock Seamounts Ecosystem Management Area is prohibited until the Regional

Administrator determines that the armorhead stock is rebuilt.

[FR Doc. 2010-21537 Filed 8-27-10; 8:45 am]

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