

these waters, particularly during El Nino years.

*Response:* Establishing a six fish per day bag limit is unnecessary given the very minor catch of bluefin tuna in the recreational fisheries of all three West Coast states. Based on the best available science, bluefin tuna populations in the North Pacific Ocean (NPO) are not experiencing overfishing nor are they overfished. NMFS is involved in cooperative research and monitoring efforts for the NPO populations of bluefin tuna and will, in conjunction with the Pacific Council, take necessary steps in the future to implement appropriate conservation measures if warranted, including the potential for additional regulations to address both commercial and recreational fisheries impacts. In a similar vein, expanding the daily bluefin tuna bag limit to all three West Coast states is unnecessary based on the limited window of recreational catch and effort of bluefin tuna in Federal waters off Oregon and Washington.

*Comment 2:* The Manager of the Marine Resources Program for the Oregon Department of Fish and Wildlife wrote in support of the proposed rule stating that the dual limit for tuna off California would make the limit off northern California consistent with the limit off Oregon.

*Response:* The current Oregon daily bag limit is an aggregate of 25 fish of offshore pelagic species, which includes all the species of tunas found to occur in Oregon waters. NMFS hereby implements daily bag limits that are geographically consistent thereby facilitating more efficient and enforceable regulations.

#### Classification

The Administrator, Southwest Region, NMFS, determined that the FMP regulation is necessary for the conservation and management of the U.S. West Coast Fisheries for Highly Migratory Species and that it is 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. As a result, a regulatory flexibility analysis was not required and none was prepared.

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 9, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

#### PART 660—FISHERIES OFF THE WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. A new paragraph (qq) is added to section 660.705 to read as follows:

#### § 660.705 Prohibitions.

\* \* \* \* \*

(qq) Take and retain, possess on board, or land, fish in excess of any bag limit specified in § 660.721.

■ 3. Subpart K is amended by adding a new section 660.721 to read as follows:

#### § 660.721 Recreational fishing bag limits.

This section applies to recreational fishing for HMS management unit species in the U.S. EEZ off the coast of California, Oregon, and Washington and in the adjacent high seas areas. In addition to individual fishermen, the operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag limits of this section are not exceeded. The bag limits of this section apply on the basis of each 24-hour period at sea, regardless of the number of trips per day. The provisions of this section do not authorize any person to take more than one daily bag limit of fishing during one calendar day. Federal recreational HMS regulations are not intended to supersede any more restrictive state recreational HMS regulations relating to federally-managed HMS. The bag limits include fish taken in both state and Federal waters.

(a) *Albacore Tuna Daily Bag Limit.* Except pursuant to a multi-day possession permit referenced in paragraph (c) of this section, a recreational fisherman may take or retain no more than:

(1) Ten albacore tuna if any part of the fishing trip occurs in the U.S. EEZ south of a line running due west true from 34°27' N. latitude (at Point Conception, Santa Barbara County) to the U.S.-Mexico border.

(2) Twenty-five albacore tuna if any part of the fishing trip occurs in the U.S. EEZ north of a line running due west true from 34°27' N. latitude (at Point Conception, Santa Barbara County) to the California-Oregon border.

(b) *Bluefin Tuna Daily Bag Limit.* A recreational fisherman may take or retain no more than 10 bluefin tuna in the U.S. EEZ off the coast of California.

(c) *Possession Limits.* If the State of California requires a multi-day possession permit for albacore or bluefin tuna harvested by a recreational fishing vessel and landed in California, aggregating daily trip limits for multi-day trips would be deemed consistent with Federal law.

(d) *Boat Limits* Off the coast of California, boat limits apply, whereby each fisherman aboard a vessel may continue to use recreational angling gear until the combined daily limits of HMS for all licensed and juvenile anglers aboard has been attained (additional state restrictions on boat limits may apply). Unless otherwise prohibited, when two or more persons are angling for HMS species aboard a vessel in the EEZ, fishing may continue until boat limits are reached.

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 0612242929-7490-02]

RIN 0648-AT93

#### Fisheries in the Western Pacific; Precious Corals Fisheries

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

**ACTION:** Final rule.

**SUMMARY:** Black coral resources in the Au'au Channel, Hawaii, have declined, possibly due to fishing pressure and an alien invasive soft coral. Current fishing regulations require minimum sizes for the harvest of living black coral colonies of 48 inches (122 cm) in height or one inch (2.54 cm) in stem diameter. Current regulations also exempt certain fishermen from the minimum stem diameter requirement, allowing the harvest of black coral with a smaller ¾ inch (1.91 cm) stem diameter by anyone who had reported black coral harvests to the State of Hawaii within

the five years prior to April 17, 2002. This final rule removes that exemption to reduce the impacts of fishing on Au'au Channel black coral resources.

**DATES:** This final rule is effective November 14, 2007.

**ADDRESSES:** Copies of the fishery management plan (FMP) and the regulatory amendment may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, or via the World Wide Web at [www.wpcouncil.org](http://www.wpcouncil.org).

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

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

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

**Background**

The fishery for black coral in Federal waters around Hawaii is managed under the Fishery Management Plan for Precious Corals of the Western Pacific Region (FMP). The FMP was developed by the Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMP appear at subpart F of 50 CFR part 665 and subpart H of 50 CFR part 600.

Black corals are slow-growing and have low rates of natural mortality and recruitment. Natural populations are relatively stable and a wide range of age classes is generally present. These life-history characteristics (longevity and many year classes) have two important consequences with respect to exploitation: the response of the population to over-harvesting is drawn out over many years, and, because of the longevity of individuals and the associated slow rates of turnover in the populations, a long period of reduced fishing effort is required to restore the ability of the stock to produce at the maximum sustainable yield (MSY) if a stock has been over-exploited for several years.

Since the harvesting of Hawaii black coral began in the late 1950s, generally fewer than 10 fishermen have been active in the fishery at any time. Participation has probably been limited by the relatively small market for black coral in Hawaii, and by the dangers of fishing operations--harvesting is done by hand using scuba at depths as great as 230 ft (70 m). Most of the catch comes from the Au'au Channel, south of Maui. Three commercial black coral harvesters

are currently permitted by the State of Hawaii. Nonetheless, landings of black coral have increased over the past two decades, and landings from 1999-2005 were about 55,000 lb (25,000 kg), which is about 58 percent of the total catch since 1985.

Black coral biomass in the Au'au Channel decreased almost 25 percent between 1976 and 2001. The causes of the reduction in biomass appear to be a combination of fishing pressure and the invasion of *Carijoa riisei*, an alien species of snowflake coral that smothers black coral colonies. The purpose of this final rule is to reduce the impacts of fishing on black coral resources in Federal waters of the Au'au Channel. Surveys in 2006 suggest that the impact of *C. riisei* has stabilized or even improved, and monitoring will continue.

Current regulations at 50 CFR 665.86(b)(1) contain minimum size requirements for the harvest of black coral colonies in the Exclusive Economic Zone (EEZ) around Hawaii. Colonies must be 48 inches (122 cm) tall or one inch (2.54 cm) in stem diameter. The stem measurement must be made no closer than one inch (2.54 cm) from the top of the living holdfast. Current regulations also contain a provision at 50 CFR 665.86(b)(2) that exempts certain fishermen from the minimum stem diameter requirement, allowing the harvest of black coral with a 3/4 inch (1.91 cm) stem diameter by anyone who reported harvests to the State of Hawaii within the five years prior to April 17, 2002. In response to concerns about the declining black coral resource, the Council recommended that NMFS amend the regulations governing the minimum size requirements for the black coral fishery in Hawaii to remove the stem diameter exemption. The Council prepared a regulatory amendment that contains background information on the issue, biological and economic impact analyses, and proposed regulatory changes. The revised regulations require that all harvested living black coral have a stem diameter of one inch (2.54 cm) or a height of 48 inches (122 cm).

**Comments and Responses**

On August 8, 2007, NMFS published in the **Federal Register** a proposed rule (72 FR 44074). The public comment period ended on September 6, 2007. NMFS received two public comments generally supporting the proposed rule.

**Changes to the Proposed Rule**

No changes to the proposed rule were made in this final rule.

**Classification**

The Regional Administrator, NMFS Pacific Islands Region, determined that this regulatory amendment is necessary for the conservation and management of the precious coral fishery and that it is 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.

There are no recordkeeping or reporting requirements associated with this final rule.

Consistent with section 604 of the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA) for the regulatory amendment, as described below.

NMFS prepared this FRFA for the final rule. This FRFA incorporates the initial regulatory flexibility analysis (IRFA). The Classification section in the proposed rule included a detailed summary of the analysis contained in the IRFA, and that discussion is not repeated in its entirety here. The need for and the objectives of the action are explained in the preambles to the proposed rule and final rule, and are not repeated here. No comments were received on the IRFA, or on the economic impacts of the proposed rule.

There are three permitted vessels in the fishery, but only two have reported landings in Hawaii. These vessels are considered to be small entities under the Small Business Administration's definition of a small entity, i.e., they are engaged in the business of fish harvesting, are not independently-owned or operated, are not dominant in their field of operation, and have average annual gross receipts not in excess of \$4 million. There are no disproportionate impacts between vessels participating in the fishery based on home port, vessel size, or gear type. The preferred Alternative 3, which would remove the exemption from minimum size requirements, and Alternative 6, which would implement a 5-year moratorium on black coral landings, would cause adverse economic impacts to the three entities that comprise the current fishery because they would not be allowed to harvest black coral in the way they are now allowed under the current management regime, thus potentially limiting their landings.

Because Federal waters account for approximately 15 percent of total landings, black coral harvesters would be impacted by an estimated reduction of approximately 15 percent gross receipts under Alternative 6, and could

be impacted by as much as a 15 percent reduction in gross receipts under the preferred Alternative 3. A 15 percent reduction would occur only if all corals currently harvested in Federal waters are harvested under the base requirement exemption. Otherwise, gross receipt reductions of 0 to 15 percent would occur under the preferred alternative depending upon the relative contribution of currently exempted products to the overall harvest. Excluding the no-action Alternative 1, which represents no change in net benefits to the affected small entities, all other alternatives considered (and described in detail in the IRFA accompanying the proposed rule) could yield potential beneficial impacts to the fishery because they eliminate certain size requirements for black coral harvest. However, these alternatives were not chosen since they would not be consistent with the objectives of the FMP and the MSA in that they would weaken the regulatory protection to black corals resources by removing size restrictions.

### Small Business Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders was prepared that also serves as a small entity compliance guide, which will be sent to all holders of permits for the precious coral fishery. Copies of the small business compliance guide are available from William L. Robinson, NMFS Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, or from the NMFS PIRO web site [www.fpir.noaa.gov](http://www.fpir.noaa.gov).

### 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: October 9, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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 § 665.86, paragraph (b) is revised to read as follows:

#### § 665.86 Size restrictions.

\* \* \* \* \*

(b) *Black coral.* Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070213032-7032-01]

RIN 0648-XD33

#### Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

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

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), effective 1200 hrs, Alaska local time, October 10, 2007. This action is necessary to fully use the 2007 Pacific halibut prohibited species catch (PSC) limit specified for vessels using trawl gear in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 10, 2007, through 2400 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 25, 2007.

**ADDRESSES:** You may submit comments, identified by "RIN 0648-XD33," by any one of the following methods:

• Mail to: P.O. Box 21668, Juneau, AK 99802;

• Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

• FAX to 907-586-7557, Attn: Ellen Sebastian

• Mail to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska

• Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Pacific halibut bycatch allowance specified for trawl gear in the GOA is 2,000 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007, as corrected by 72 FR 13217, March 21, 2007).

NMFS closed directed fishing for groundfish by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on October 8, 2007 (published on October 11, 2007 in the **Federal Register**). As of October 9, 2007, NMFS has determined that 330 metric tons of the 2007 Pacific halibut bycatch allowance for the fishery remains. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2007 Pacific halibut PSC limit specified for vessels using trawl gear in the GOA, NMFS is terminating the