

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*,

lehi *Aphareus rutilans*, and hapu'upu'u (also hapu'u) *Epinephelus quernus*.

In September 2006, NMFS updated the status of stocks using 2004 data, and concluded that overfishing was still occurring, but that fishing effort in the MHI would have to be reduced by 24 percent from the 2004 level (greater than the 15 percent as targeted in the amendment being development) to bring archipelago-wide fishing mortality down to the maximum fishing mortality threshold. Although the Council had initially developed an FMP amendment to close Penguin and Middle Banks to bottomfish fishing, those management measures would be insufficient to reduce fishing effort by the required 24 percent.

To immediately reduce fishing mortality while long-term management measures are developed, the Council requested at its 137th meeting in Honolulu, Hawaii, on March 15, 2007, that NMFS implement this interim rule to close all Federal waters around the MHI to commercial and recreational bottomfish fishing for the seven deep-water bottomfish management unit species during May through September 2007. This time period will maximize protection for bottomfish during their spawning season and minimize social and economic impacts to fishery participants, as other fishing opportunities are available during the summer, e.g., trolling for pelagic fishes. The closed season applies only in the MHI and will not affect importation of bottomfish into Hawaii.

This interim action is intended to immediately reduce fishing mortality in the short term, and provide a sufficient time period for the Council to develop an FMP amendment containing management measures designed to prevent overfishing in the long term. The effectiveness of this interim action would be enhanced by a complementary closure of State waters by the State of Hawaii, as collaborative Federal and State actions would facilitate the immediate cessation of fishing mortality in both Federal and State waters on the bottomfish stock complex that is experiencing overfishing.

During the interim closed season from May through September 2007, Council and NMFS staffs will develop the management measures to be proposed in an FMP amendment. Such measures may include, but are not limited to, additional seasonal closures; a Total Allowable Catch (TAC) based on a reducing fishing mortality by 24 percent, the value from the most recent stock assessment, with a TAC mechanism that responds to necessary mortality reductions identified in future assessments; and a new Federal permit and data collection program for recreational bottomfish fishing. The revised recommendations are anticipated to be finalized by Council action in June 2007.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as this requirement is impracticable and contrary to the public interest. The Council previously took action to prepare a plan amendment to address the overfishing by reducing fishing effort by 15 percent. Before that amendment could be implemented, however, updated information indicated that effort must be reduced by 24 percent from 2004 effort levels. To respond to the new information, the Council must prepare a revised FMP amendment. In the meantime, no action has been taken to reduce fishing effort, and overfishing on bottomfish continues. There is a need to implement the seasonal closure immediately so that overfishing of the bottomfish stock complex can be addressed, and adverse impacts to public fishery resources can be reduced as soon as possible. These same reasons constitute good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date of this action.

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

A regulatory flexibility analysis has not been prepared for this interim rule pursuant to the Regulatory Flexibility Act because NMFS is not required by section 553 of Title 5 of the United States Code, or any other law, to publish a general notice of proposed rulemaking for this rule.

**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: May 9, 2007

**William T. Hogarth,**

*Assistant Administrator for Fisheries, 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, add new paragraphs (j) and (k) to read as follows:

**§ 665.62 Prohibitions.**

\* \* \* \* \*

(j) Fish for or possess any Hawaii Prohibited Bottomfish Management Unit Species, as specified in § 665.71, in the Main Hawaiian Islands Management Subarea during a closed season in violation of § 665.72(a).

(k) Sell or offer for sale any Hawaii Prohibited Bottomfish Management Unit Species, as specified in § 665.71, in violation of § 665.72(a) or (b).

■ 3. Under subpart E, add a new § 665.71 to read as follows:

**§ 665.71 Hawaii Prohibited Bottomfish Management Unit Species.**

Hawaii Prohibited Bottomfish Management Unit Species means the following species:

Common name	Local Name	Scientific Name
Silver jaw jobfish	Lehi	<i>Aphareus rutilans</i> .
Squirrelfish snapper	Ehu	<i>Etelis carbunculus</i> .
Longtail snapper	Onaga	<i>Etelis coruscans</i> .
Pink snapper	Opakapaka	<i>Pristipomoides filamentosus</i> .
Snapper	Kalekale	<i>Pristipomoides sieboldii</i> .
Snapper	Gindai	<i>Pristipomoides zonatus</i> .
Sea bass	Hapu'upu'u	<i>Epinephelus quernus</i> .

■ 4. Under subpart E, add a new § 665.72 to read as follows:

**§ 665.72 Closed seasons.**

(a) All fishing for, or possession of, any Hawaii Prohibited Bottomfish Management Unit Species, as specified in § 665.71, is prohibited in the Main Hawaiian Islands Management Subarea during May 15, 2007, through September 30, 2007, 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 Prohibited Bottomfish Management Unit Species, as specified in § 665.71, may not be sold or offered for sale during May 15, 2007, through September 30, 2007, inclusive, except as otherwise authorized by law.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 070213033-7033-01]

RIN 0648-XA23

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the Bering Sea and Aleutian Islands

management area (BSAI). This action is necessary to prevent exceeding the 2007 second seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher processor vessels using trawl gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), May 10, 2007, through 1200 hrs, A.l.t., June 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands 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 second seasonal allowance of the Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI is 11,133 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007), for the period 1200 hrs, A.l.t., April 1, 2007, through 1200 hrs, A.l.t., June 10, 2007. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 second seasonal allowance of the Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,933 mt, and is setting aside the remaining 2,200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed

fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 8, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is 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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