

for Research on Cancer, do not pose a present or potential risk of causing toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. EPA believes the results, of these reviews as well as their own assessment of waste generation and management information for saccharin and its salts, indicate that saccharin and its salts do not meet the criteria for listing as hazardous wastes under 40 CFR 261.11. EPA's listing of saccharin and its salts as a hazardous substance under CERCLA (40 CFR 302.4) was based solely upon being listed as hazardous wastes under RCRA (40 CFR 261.33(f)). Thus, we conclude there is no significant environmental impact associated with removing saccharin and its salts for the "List of Hazardous Substances and Reportable Quantities" found in Table 1 to Appendix A of 49 CFR 172.101 in this final rule.

#### List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Hazardous substances, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, Title 49, part 172 of the Code of Federal Regulations, is amended as follows:

#### PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 1. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

#### § 172.101 [Amended]

■ 2. Section 172.101 Appendix A is amended as follows:

■ a. By removing the entry "1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts" from Table 1.

■ b. By removing the entry "Saccharin & salts" from Table 1.

Issued in Washington, DC on June 21, 2011 under authority delegated in 49 CFR part 1.

**Cynthia L. Quarterman,**  
Administrator.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 100803320–1319–03]

RIN 0648–AY93

#### Fisheries in the Western Pacific; Mechanism for Specifying Annual Catch Limits and Accountability Measures

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the procedures and timing for specifying annual catch limits (ACLs) and accountability measures (AMs) for western Pacific fisheries. The final rule is intended to help NMFS end and prevent overfishing, rebuild overfished stocks, and achieve optimum yield.

**DATES:** This rule is effective July 27, 2011.

**ADDRESSES:** Copies of the Fishery Ecosystem Plans (FEP) for the Pacific Remote Islands Areas (PRIA), American Samoa, Mariana Archipelago, Hawaii, and western Pacific pelagic fisheries are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, fax 808–522–8226, or <http://www.wpcouncil.org>.

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

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act requires that fishery management plans include a mechanism for specifying ACLs at a level such that overfishing does not occur and that does not exceed the fishing level recommendation of a council's Scientific and Statistical Committee (SSC). AMs are also required to prevent ACLs from being exceeded, and to correct or mitigate overage of an ACL should it occur. The requirements for ACLs and AMs do not apply to fisheries for stocks that are subject to international fishery agreements in which the U.S. participates, or for species with life cycles of approximately one year. ACLs and AMs are also not required for species classified in a fishery management plan as "ecosystem component species," which are generally non-target species, not determined to be subject to

overfishing, approaching overfished, or overfished, not likely to become subject to overfishing or overfished, and generally not retained for sale or personal use.

This final rule implements the mechanism that NMFS will use to specify ACLs (possibly including multi-year ACLs) and AMs in western Pacific fisheries. Briefly, the Council will recommend an ACL to NMFS at least two months before the start of a fishing year. The Council will base its recommendation on the SSC's fishing level recommendation for the subject species or fishery, and may not exceed it. At least one month before the fishing year starts, NMFS will request public comment on the proposed ACL. Before the start of the fishing year, NMFS will notify fishermen and the public of the final ACL specification.

NMFS will monitor the fishery on an ongoing basis throughout the fishing year. When an ACL is projected to be reached during the year, NMFS will notify fishermen and the public that fishing for the regulated stock will be restricted through one or more inseason accountability measures to ensure that the ACL is not exceeded. Restrictions may include, but are not limited to, closing the fishery, closing specific areas, changing bag limits, or otherwise restricting effort or catch. Any inseason restriction will generally remain in effect until the end of the fishing year.

If inseason monitoring or subsequent data analyses indicate that an ACL was exceeded in the previous fishing year, the Council may recommend that NMFS reduce the ACL for the subsequent year by the amount of the overage.

This rule establishes only the procedures for specifying ACLs and AMs. The Council and NMFS will provide the public with opportunities to review and comment on the ACLs and AMs for each fishery at the time they are proposed.

#### Comments and Responses

On March 31, 2011, NMFS published a proposed rule and request for public comment (76 FR 17808). The public comment period ended on May 16, 2011. Additional background information on this final rule is found in the preamble to the proposed rule and is not repeated here. NMFS received two comments that were generally supportive of this action.

#### Changes From the Proposed Rule

No changes were made from the proposed rule.

**Classification**

The Administrator, Pacific Islands Region, NMFS, determined that the FEP amendments that establish a mechanism for specifying ACLs and AMs are necessary for the conservation and management of western Pacific fisheries, and that they are 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.

NMFS will begin specifying ACLs and AMs for each fishery that requires them using the proposed notice-and-comment mechanism starting in fishing year 2011. When fishery-specific ACLs and AMs are specified through subsequent rulemaking, NMFS will assess each proposed specification for compliance with all applicable laws, including any relevant impacts on small businesses, organizations and small government jurisdictions, and will prepare an initial regulatory flexibility analysis for that action, if warranted.

**List of Subjects in 50 CFR Part 665**

Accountability measures, Annual catch limits, Fisheries, Fishing, Western and central Pacific.

Dated: June 21, 2011.

**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 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 50 CFR part 600.310.

■ 2. In subpart A, add § 665.4 to read as follows:

**§ 665.4 Annual catch limits.**

(a) *General.* For each fishing year, the Regional Administrator shall specify an annual catch limit, including any overage adjustments, for each stock or stock complex of management unit species defined in subparts B through F of this part, as recommended by the Council, and considering the best available scientific, commercial, and other information about the fishery for that stock or stock complex. The annual catch limit shall serve as the basis for invoking accountability measures in paragraph (f) of this section.

(b) *Overage adjustments.* If landings of a stock or stock complex exceed the specified annual catch limit in a fishing year, the Council will take action in accordance with 50 CFR 600.310(g), which may include recommending that the Regional Administrator reduce the annual catch limit for the subsequent year by the amount of the overage or other measures, as appropriate.

(c) *Exceptions.* The Regional Administrator is not required to specify an annual catch limit for a management unit species that is statutorily excepted from the requirement pursuant to 50 CFR 600.310(h)(2), or that the Council has identified as an ecosystem component species. The Regional Administrator will publish in the **Federal Register** the list of ecosystem component species, and will publish any changes to the list, as necessary.

(d) *Annual catch target.* For each fishing year, the Regional Administrator may also specify an annual catch target that is below the annual catch limit of a stock or stock complex, as recommended by the Council. When used, the annual catch target shall serve as the basis for invoking accountability measures in paragraph (f) of this section.

(e) *Procedures and timing.* (1) No later than 60 days before the start of a fishing year, the Council shall recommend to the Regional Administrator an annual catch limit, including any overage adjustment, for each stock or stock complex. The recommended limit should be based on a recommendation of the SSC of the acceptable biological catch for each stock or stock complex. The Council may not recommend an annual catch limit that exceeds the acceptable biological catch recommended by the SSC. The Council may also recommend an annual catch target below the annual catch limit.

(2) No later than 30 days before the start of a fishing year, the Regional Administrator shall publish in the **Federal Register** a notice of the proposed annual catch limit specification and any associated annual

catch target, and request public comment.

(3) No later than the start of a fishing year, the Regional Administrator shall publish in the **Federal Register** and use other methods to notify permit holders of the final annual catch limit specification and any associated annual catch target.

(f) *Accountability measures.* When any annual catch limit or annual catch target is projected to be reached, based on available information, the Regional Administrator shall publish notification to that effect in the **Federal Register** and shall use other means to notify permit holders.

(1) The notice will include an advisement that fishing for that stock or stock complex will be restricted beginning on a specified date, which shall not be earlier than 7 days after the date of filing the notice for public inspection at the Office of the **Federal Register**. The restriction may include, but is not limited to, closure of the fishery, closure of specific areas, changes to bag limits, or restrictions in effort. The restriction will remain in effect until the end of the fishing year, except that the Regional Administrator may, based on a recommendation from the Council, remove or modify the restriction before the end of the fishing year.

(2) It is unlawful for any person to conduct fishing in violation of the restrictions specified in the notification issued pursuant to paragraph (f)(1) of this section.

■ 3. In § 665.12, add the definitions of “Ecosystem component species” and “SSC” in alphabetical order to read as follows:

**§ 665.12 Definitions.**

\* \* \* \* \*

*Ecosystem component species* means any western Pacific MUS that the Council has identified to be, generally, a non-target species, not determined to be subject to overfishing, approaching overfished, or overfished, not likely to become subject to overfishing or overfished, and generally not retained for sale or personal use.

\* \* \* \* \*

SSC means the Scientific and Statistical Committee of the Western Pacific Fishery Management Council.

\* \* \* \* \*

■ 4. In § 665.15, add a new paragraph (u) to read as follows:

**§ 665.15 Prohibitions.**

\* \* \* \* \*

(u) Fail to comply with the restrictions specified in the notification

issued pursuant to § 665.4(f)(1), in violation of § 665.15(f)(2).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 0808051054-1319-02]

RIN 0648-AW67

#### Western Pacific Pelagic Fisheries; Prohibiting Longline Fishing Within 30 nm of the Northern Mariana Islands

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

**ACTION:** Final rule.

**SUMMARY:** This final rule prohibits pelagic longline fishing within approximately 30 nautical miles (nm) of the islands of the Commonwealth of the Northern Mariana Islands (CNMI). By establishing a longline fishing prohibited area around the CNMI, NMFS intends to reduce the potential for nearshore localized fish depletion from longline fishing, and to limit catch competition and gear conflicts between the CNMI-based longline and trolling fleets. This rule also makes several administrative clarifications to the pelagic fishing regulations.

**DATES:** This final rule is effective July 27, 2011.

**ADDRESSES:** The background on this final rule may be found in the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (FEP) and FEP Amendment 2, which are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, <http://www.wpcouncil.org>. Amendment 2 may also be found at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Toby Wood, NMFS PIR Sustainable Fisheries, 808-944-2234.

**SUPPLEMENTARY INFORMATION:** Pelagic fisheries in the U.S. western Pacific are managed under the FEP. In Amendment 2, the Council recommended that NMFS prohibit purse seine fishing in the U.S. EEZ around the Mariana Archipelago, including the CNMI and Guam, and prohibit pelagic longline fishing within 30 nm (approx. 56 km) of the CNMI. The recommended prohibition on purse

seine fishing was intended to limit impacts on juvenile recruitment of bigeye tuna, and reduce the potential for localized depletion and catch competition between purse seine vessels and the pelagic fishing fleets of the CNMI and Guam. The recommended longline closed area near the CNMI was intended to minimize potential gear conflicts and catch competition between the local pelagic trolling fleet and the developing CNMI-based longline fishery (a 50-nm (93 km) longline prohibited area currently exists around Guam to prevent gear conflicts).

Additional background information on this final rule is found in the preamble to the proposed rule published on March 31, 2011 (76 FR 17811); the comment period ended on May 16, 2011. NMFS received two substantive comments, and responds as follows:

*Comment 1:* The longline prohibited area around the CNMI should be increased to 90 nm (167 km) from the proposed 30 nm to further protect marine life and seafood resources in the region.

*Response:* U.S. longline fishing in the Pacific is regulated stringently to minimize impacts on protected species and harvest fish sustainably. Requirements for this fishery include permits, specific gear configuration and identification, area restrictions monitored by a satellite vessel monitoring system, observer placement when requested, educational workshops, and reporting requirements for fishing activities and interactions with protected resources, and others.

The Council and NMFS assessed the potential impacts of longline prohibited areas ranging in size from 25 to 100 nm (46 to 185 km) around the CNMI, and concluded that a 30-nm zone best achieved the conservation and management objectives of the proposed amendment, while at the same time minimizing economic costs and ensuring sustained participation by fishermen. The 30-nm prohibited area encompasses the majority of the submarine habitat containing banks and reefs where small boats typically concentrate their fishing efforts. Excluding longline fishing from this zone will prevent gear conflicts and competition for catches between the small boats and larger longliners, and will reduce the likelihood of longline gear entanglement on the banks and reefs, thereby protecting reefs and the marine life that depends on it.

Larger prohibited areas would impose higher travel costs to the longline vessels with little to no additional benefit of conserving stocks of pelagic

fish or protected resources, or minimizing the potential for gear conflicts with the small boat fishery. A 30-nm prohibited area is not so large as to prevent longline fishing activity, which will allow for the development of the longline fishery and provide economic benefits to the CNMI.

*Comment 2:* There is little demonstrated need or justification for the proposed prohibition on purse seine fishing because there is virtually no history of purse seine fishing in the Mariana Archipelago, and there is little evidence that purse seine fishing negatively impacts other pelagic fisheries in the area. Also, an EEZ closure will disadvantage the United States in its negotiations to renew the South Pacific Tuna Treaty, as the proposed prohibition on purse seine fishing in the U.S. EEZ might encourage other Pacific Island parties to take similar protective measures in their national waters.

*Response:* NMFS agrees, and this final rule will not implement the proposed prohibition on purse seine fishing in the EEZ around the Mariana Archipelago. Under the Magnuson-Stevens Act, NMFS may partially approve a plan or amendment to the FEP offered by the Council. When partially approving an amendment, NMFS must specify the applicable law with which the amendment is inconsistent, explain the nature of the inconsistency, and recommend to the Council actions it could take to conform the amendment to the applicable law.

The Magnuson-Stevens Act requires NMFS to consider ten National Standards when implementing fishery conservation and management measures. National Standard 2 requires such measures to be based on the best scientific information available, and requires fishery management actions to be founded on thorough analyses that allow NMFS to rationally conclude that the selected alternative will accomplish legitimate conservation and management objectives. The scientific analysis in Amendment 2 presented inconclusive evidence of a negative impact of purse seine fishing on other fisheries and fish stocks, with the possible exception of some localized impacts on trolling catch rates over small distances near American Samoa. Nonetheless, the Council recommended prohibiting U.S. purse seine fishing throughout the entire EEZ around the Mariana Archipelago. That recommendation is not supported by the best available scientific evidence on the need to reduce interactions between the purse seine and local trolling fisheries in the area around the CNMI, and is,