

candela anywhere in the beam pattern. The petitioners stated that this request was based on UMTRI Report No. UMTRI-2000-41, "Relative Merits of the U.S. and ECE High-Beam Maximum Intensities and of Two- and Four-Headlamp Systems" but the agency notes this research did not evaluate upper beams with the requested 140,000 candela value. Instead, it evaluated intensities between the existing and newly requested maximum values. Due to the diminishing returns of increasing upper beam intensity, the petitioners cited a 5-10% improvement in seeing distance (due to the almost 87% increase in the maximum value from 75,000 to 140,000 candela). However, the petitioners did not quantify how this might affect safety benefits, and in particular whether any improvements would outweigh any associated disbenefits associated with potential increases in glare due to higher intensity upper beam headlamps.

With regard to the requested test procedures for this option, which would require testing with "accurate rated light sources," this would be a significant departure from the current approach of specifying requirements using any compliant, replaceable light source of the type intended for use in the system and could, in the agency's opinion, have a negative impact on safety. The agency believes that requiring headlamps to meet specified requirements with production light sources is the best approach because it ensures consumers will obtain the specified performance with the products they purchase, i.e., it requires manufacturers to take into account typical production tolerances and variation in light sources. Modifying the standard to instead specify requirements utilizing testing with "accurate rated light sources," which do not represent normal production variation, would mean that the performance might not be obtained in the real world. Absent additional changes to ensure that typical production variation was accounted for in the test requirements, the agency believes that the requested change could lead to reduced headlamp performance. The petitioners did not provide any evidence this would not occur.

Regarding the other potential industry benefits cited by the petitioners, the agency notes that no data were submitted to quantify associated cost impacts on consumers. Similarly, the petitioners did not quantify the amount of cost savings related to reduced inventory levels, potentially quicker expansion into new markets due to reduced trade barriers, and less complexity in stocking replacement

lamps for multiple markets. We note that the pending approval of the requested changes into ECE R112 cited by the petitioners as anticipated for fall 2004 still has not occurred.

#### IV. Agency Conclusion

NHTSA notes that while adding a new option would provide some additional flexibility for manufacturers in terms of being able to choose a new beam pattern, we are concerned that there may be a negative impact on safety associated with increased glare levels if the agency were to allow the newly requested lower beam photometry test points and higher intensity upper beam headlamps. The petitioners did not provide sufficient data to demonstrate otherwise or sufficient data to show there would be cost savings to consumers and manufacturers at comparable safety levels. Therefore, NHTSA is denying the petition. However, the agency is separately pursuing a more comprehensive effort to evaluate possible modifications to FMVSS No. 108, with the primary goal being to translate, to the extent possible, the existing provisions (along with their associated underlying assumptions) into performance-oriented terms independent of technology. We anticipate this thorough evaluation will take some time, but in the process, the agency will consider harmonization opportunities and, based upon the results, the agency anticipates it may then be in a position to consider proposing regulatory action to modify our lighting standard.

Issued on: August 18, 2009.

**Julie Abraham,**

*Director, Office of International Policy, Fuel Economy and Consumer Programs.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 0908131233-91234-01]

RIN 0648-XQ14

#### Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; 2009-10 Main Hawaiian Islands Bottomfish Total Allowable Catch

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

**ACTION:** Proposed specification; request for comments.

**SUMMARY:** NMFS proposes to specify establish a total allowable catch (TAC) for the 2009-10 fishing year of 254,050 lb (115,235 kg) of Deep 7 bottomfish in the main Hawaiian Islands (MHI). The TAC would be set in accordance with regulations established to support long-term sustainability of Hawaii bottomfish in the Hawaiian Archipelago.

**DATES:** Comments must be received by September 8, 2009.

**ADDRESSES:** Comments on this proposed specification, identified by 0648-XQ14, 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](http://www.regulations.gov); or
- Mail: 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](http://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 (if you wish to remain anonymous, enter "NA" in the required name and organization fields). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP) and the related Environmental Impact Statement 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, or [www.wpcouncil.org](http://www.wpcouncil.org).

An environmental assessment (EA) was prepared that describes the impact on the human environment that would result from this proposed action. This action, specification of a TAC, is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations and therefore a Regulatory Impact Review was not prepared. Based on the environmental impact analyses presented in the EA, NMFS prepared a finding of no significant impact (FONSI) for the

proposed action. Copies of the EA and FONSI are available from [www.regulations.gov](http://www.regulations.gov), or the Council (see **ADDRESSES**).

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

**SUPPLEMENTARY INFORMATION:** This **Federal Register** document is available at [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr).

The bottomfish fishery in Federal waters around Hawaii is managed under the Bottomfish FMP, developed by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). Regulations governing bottomfish fishing by U.S. vessels in accordance with the Bottomfish FMP appear at 50 CFR part 665 and subpart H of 50 CFR part 600. Currently, bottomfish stocks in the Hawaiian Archipelago are not experiencing overfishing, and efforts to minimize localized stock depletion in the MHI Management Subarea are precautionary. The MHI Management Subarea refers to the portion of the U.S. Exclusive Economic Zone around the Hawaiian Archipelago lying to the east of 161° 20' long.

Pursuant to regulations at § 665.72, NMFS must be directed to specify a TAC limit for Deep 7 bottomfish in the MHI for the fishing year, based on a recommendation from the Council, considering 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*).

When the TAC for the year is projected to be reached, NMFS will close the non-commercial and commercial fisheries until the end of the fishing year (August 31). During a fishery closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish 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'omalū 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 Last year (2008–09 fishing year), the TAC was of 241,000 lb (109,316 kg) of Deep-7 bottomfish in the MHI (74 FR 6998; February 12, 2009). Monitoring of the commercial fishery indicated that the TAC for the 2008–09 fishing year was projected to be reached by on or before July 6, 2009, and, in accordance with the regulations at § 665.72, NMFS published a temporary rule closing the non-commercial and commercial MHI bottomfish fisheries on July 6, 2009 (74 FR 27253; June 9, 2009). The fishery is scheduled to re-open on September 1, 2009.

At its 145th meeting in Kailua-Kona, Hawaii, held July 20–25, 2009, the Council reviewed a background document and an preliminary initial EA that which incorporated data from an updated March 2009 bottomfish stock assessment published by NMFS Pacific Islands Fisheries Science Center (PIFSC). These documents were available at the Council's 145th meeting. After considering the information in the initial EA, risks of overfishing, and recommendations from the Council's Science and Statistical Committee, and input from the public, the Council recommended a TAC of 254,050 lb (115,235 kg) of MHI Deep 7 bottomfish for the 2009–2010 fishing year. Language from FONSI inserted here (Subject to Change):

Based on the updated March 2009 bottomfish stock assessment prepared by NMFS PIFSC, the proposed 2009–10 TAC is associated with a zero percent risk of overfishing of Hawaiian archipelagic bottomfish stocks; and between 39- and 44 percent risk of localized depletion (or excess fishing mortality) of the MHI management subarea bottomfish stocks. These risk values are similar to those estimated by PIFSC for the 2008 - 2009 fishing year (i.e., zero and 40 percent, respectively)(74 FR 6998; February 12, 2009).

NMFS will consider the Council's recommendation, potential environmental and economic affects of the proposed TAC, and comments received during the public comment period for this proposed specification, and will announce the final TAC specification in the **Federal Register**. To be considered, comments on this proposed specification must be received by September 8, 2009, not postmarked or otherwise transmitted by that date.

Regardless of the final TAC specification, all other management measures will continue to apply in the MHI bottomfish fishery. The MHI bottomfish fishery is scheduled to re-open on September 1, 2009, and will continue until August 31, 2010, unless

the fishery is closed prior to August 31 as a result of the TAC being reached.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the Bottomfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

### Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council 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.

Language from SBA Letter (Drafted by M. Razin): 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. There are approximately 380 vessels engaged in the commercial harvest of MHI bottomfish. Average gross receipts per vessel for the 2008–2009 fishery was \$3,577.00, based on a price of \$5.64 per lb and a harvest of the 2008–2009 TAC specification of 241,000 lb. In general, the relative importance of MHI bottomfish to commercial participants as a percentage of overall fishing (or household) income is unknown, as the total suite of fishing (or other income-generating) activities undertaken by individual operations across the year has not been examined, to date. The majority of the 380 vessels comprising the affected universe were under 30 ft (9.1 m) in length overall.

Based on all available information, NMFS has determined that all vessels in the current fishery are small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$4 million. Therefore, there are no disproportionate economic impacts between large and small entities. Furthermore, there are no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length. Assuming an average price of \$5.64 per lb, the proposed TAC specification of 254,050 lbs (115,235 kg) is expected to yield \$1,432,842.00 in total revenue, or an average of \$3,770.00 in revenue per vessel, compared to \$3,577.00 per vessel for the 2008–2009 fishery. This is resulting in an expected five percent increase in revenue per vessel from implementing the proposed specification. Even though there would be a substantial number of vessels, i.e., 100 percent of the bottomfish fleet, affected by this specification, there would be no significantly adverse economic impact to individual

vessels resulting from the implementation of this specification. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), NMFS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

This action is exempt from review under the procedures of E.O. 12866 because this action contains no implementing regulations.

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

Dated: August 19, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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