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**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the information repositories.

**FOR FURTHER INFORMATION CONTACT:** John C. Meyer, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF-LP), 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-6742 or 1-800-533-3508 ([meyer.john@epa.gov](mailto:meyer.john@epa.gov)).

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

**Information Repositories:** Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, (214) 665-6424, Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; San Jacinto College, South Campus Library, 13735 Beamer Road, Houston, Texas 77089, (281) 992-3416, Monday through Thursday 8 a.m. to 9 p.m.; Friday 8 a.m. to 3 p.m.; Saturday 10 a.m. to 1 p.m.; Texas Commission on Environmental Quality (TCEQ), Central File Room Customer Service Center, Building E, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-2900, Monday through Friday 8 a.m. to 5 p.m.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 25, 2006.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 060606149-6149-01; I.D. 052506A]

RIN 0648-AT95

#### Fisheries in the Western Pacific; Omnibus Amendment for the Bottomfish and Seamount Groundfish Fisheries, Crustacean Fisheries, and Precious Coral Fisheries of the Western Pacific Region

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

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

**SUMMARY:** This proposed rule would amend three fishery management plans to include fisheries and waters around the Commonwealth of the Northern Mariana Islands (CNMI) and Pacific Remote Island Areas (PRIA). These amendments affect United States domestic fisheries that offload or operate in Federal waters around the CNMI and the PRIA. These amendments would establish new permitting and reporting requirements for vessel operators targeting bottomfish species around the PRIA to improve understanding of the ecology of these species and the activities and harvests of the vessel operators that target them. They would also establish new permitting and reporting requirements for vessel operators targeting crustacean species and precious corals around the CNMI and PRIA.

**DATES:** Comments on the proposed rule must be received by August 7, 2006.

**ADDRESSES:** Comments on the proposed rule, identified by 0648-AT95, should be sent to any of the following addresses:

- E-mail: [AT95Omnibus@noaa.gov](mailto:AT95Omnibus@noaa.gov). Include in the subject line of the e-mail comment the following document identifier AAT95 Omnibus. Comments sent via e-mail, including all attachments, must not exceed a 5 megabyte file size.
- Federal e-Rulemaking portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- Mail: William L. Robinson, Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700. Copies of the FMPs, Amendments, and Environmental Assessment (EA)

may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (WPFMC), 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, or the Internet at [www.wpcouncil.org](http://www.wpcouncil.org).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William L. Robinson (see **ADDRESSES**), or by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Robert Harman, NMFS PIR, 808-944-2271.

**SUPPLEMENTARY INFORMATION:** The NMFS Pacific Islands region encompasses Federal waters, i.e., the U.S. Exclusive Economic Zone (EEZ), around the Territories of Guam and American Samoa, the State of Hawaii, the CNMI, and the PRIA. The EEZ extends from this inner boundary to 200 nautical miles (nm) offshore. The inner boundary of the EEZ is the seaward limit of each coastal state, commonwealth, territory and possession. The EEZ extends from this inner boundary to 200 nautical miles (nm) offshore. For the CNMI and PRIA, the inner boundary of the EEZ is extends to the shoreline, while for the seaward limits of Guam, American Samoa, and Hawaii, the inner boundary of the EEZ is extend to 3 nm from the shoreline.

The WPFMC has developed, and NMFS has approved and implemented, five fishery management plans that cover pelagic species, crustaceans, bottomfish and seamount groundfish, precious corals, and coral reef ecosystems fisheries. The Federal waters surrounding the CNMI are currently not included in the Fishery Management Plans for the Bottomfish, Crustaceans, or Precious Corals Fisheries of the Western Pacific Region (Bottomfish FMP), (Crustaceans FMP), and (Precious Corals FMP). Similarly, Federal waters surrounding the PRIA are not included in the Bottomfish or Crustaceans FMPs. Vessels have been known to fish for bottomfish and crustaceans in the Federal waters surrounding the CNMI and the PRIA, although on a small scale. While there are currently no known fisheries operating in the PRIA, and no precious corals fisheries operating in the CNMI, interest may arise in the future. These proposed amendments would include the fisheries operating in these areas under the FMPs.

The CNMI bottomfish fishery consists primarily of small boats (< 30 ft, 9.1 m) engaged in commercial and subsistence

fishing. These boats are usually limited to fishing in daylight hours within 50 nm of Saipan, with fishermen relying on land features for navigation (as opposed to GPS and fathometers). In addition to the small boats, a few larger vessels (> 50 ft, 15.2 m) sometimes participate in the fishery, ranging farther north on multi-day trips, and with more sophisticated navigation tools. Data about bottomfish landings from the larger vessels are collected only voluntarily, so the future reliability of data collection cannot be assured. Similarly, an offshore deep-water shrimp fishery at one time operated in the CNMI, but knowledge of the fishery and collection of data about the catch was not timely. Additionally, precious corals have been landed from Federal waters around the CNMI, with little or no information about the fishery collected. This history led the WPFMC to recommend the preliminary step of including CNMI waters under the Bottomfish, Crustaceans, and Precious Corals FMPs. This would facilitate further steps to monitor catches and, if needed in the future, to implement other management measures for these fisheries. While the EEZ around the CNMI extends from the shoreline to 200 nm, the WPFMC recommended deferring to the CNMI regulatory control for fishing toby by CNMI citizens, including fishery permitting and data collection, in waters 0 to 3 nm of the EEZ around CNMI. These FMP amendments do not, however, confer authority to the CNMI over EEZ resources.

Although no fishing is being conducted currently in the PRIA, there has been some recent historical activity by vessels using mixed fishing gear in the PRIA. These vessels have targeted bottomfish with handlines, and they troll for pelagic species, or trap for deep-water shrimp. A 2002 regulatory amendment to the Pelagics FMP (67 FR 30346, May 6, 2002) requires Federal reporting for vessels trolling for and landing pelagic management unit species (PMUS) in the PRIA. Data collection for other PRIA fisheries occurs at the landing port which, to date, has been exclusively in Hawaii. However, Hawaii's state-required landings data do not include details on effort, bycatch, location, or protected species interactions. There is currently no mechanism to gather fishery statistics for bottomfish landings from the PRIA. As in the case of the CNMI, the Council determined that the PRIA need to be included under its management plans to allow for the collection of fishery data and the timely

implementation of further management actions should they become necessary.

The U.S. Fish and Wildlife Service (USFWS) manages a number of National Wildlife Refuges (NWR) in the western Pacific, including fishing activities within refuge boundaries pursuant to the National Wildlife Refuge System Administration Act (NWRSA) of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and other authorities. Under the NWRSA, as amended, NWR waters are closed to all uses until they are specifically opened for such uses, and that the USFWS determines whether to open NWR waters for any use that is compatible with the refuges' primary purpose(s) and mission. While commercial fishing is generally prohibited in NWR waters, specific regulations are absent. Including NWR areas under the Bottomfish, Crustaceans, and Precious Corals FMPs, as proposed in these amendments, would add specific regulations to these areas. However, these regulations would not supersede any valid existing Federal regulations that are more restrictive to fishing operations.

Amendments 8, 12, and 6 also consider including in the management unit a variety of bottomfish and crustacean species that are currently or potentially targeted by fishermen. The importance of these species as a component of catches is known from both existing data collection programs and anecdotal information, and before Federal management measures can be applied to these species they must be included in the management unit. After consideration, the Council decided to designate 48 bottomfish species as part of the management unit. Subsequently, however, these 48 species were included in the management unit of the Fishery Management Plan for Coral Reef Ecosystems in the Western Pacific Region, developed by the WPFMC and implemented in 2004. Thus, this document does not include the designation of bottomfish species in the preferred alternative. The WPFMC did not designate the three crustacean species or species groups because they determined that these species groups Federal waters are not sufficiently harvested in Federal waters to warrant designation at this time. This action is designed to establish monitoring systems and management mechanisms to implement specific regulatory controls should the need arise; specific management measures (such as time and area closures, or effort and landing limits) are not included.

## Classification

At this time, NMFS has not determined that the FMP amendments that this rule would implement are consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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.

This rule would amend three fishery management plans to include fisheries and waters around the CNMI and PRIA in the management units. Amendment 8 to the Bottomfish FMP would establish new permitting and reporting requirements for vessel operators targeting bottomfish species around the PRIA in order to improve our understanding of the ecology of the species, and the activities and harvests of the vessel operators that target them. For the same reasons, Amendment 12 to the Crustaceans FMP would establish new permitting and reporting requirements for vessel operators targeting crustacean species around the CNMI or the PRIA, and Amendment 6 to the Precious Corals FMP would establish new permitting and reporting requirements for vessel operators targeting precious corals around the CNMI.

This action is anticipated to affect the entire universe of active bottomfish fishery participants (approximately 43) based in the CNMI who fish more than three miles from shore, as well as an unknown number of vessel operators who may enter the fishery in the future. The CNMI bottomfish fishery consists primarily of small boats (< 30 ft, 9.1 m) engaged in commercial and subsistence fishing. These boats are usually limited to fishing in daylight hours within 50 nm of Saipan, with fishermen relying on land features for navigation (as opposed to GPS and fathometers). In addition to the small boats, a few larger vessels (> 50 ft, 15.2 m) sometimes participate in the fishery, ranging farther north on multi-day trips, and with more sophisticated navigation tools. Data about bottomfish landings from the larger vessels are now collected only voluntarily. Given this fleet's aggregate annual ex-vessel revenue of \$142,260, the annual average per-vessel revenue is \$3,308; therefore, all affected operations are classified as "small entities" because their annual revenues are below the \$4 million threshold set for this determination. The affected entities, CNMI bottomfish vessels, landed a total of 54,400 lb (24,675 kg) of fish in 2004.

Also affected will be future participants in the CNMI-based offshore crustacean and precious coral fisheries. Available

information indicates that there are no current participants in these fisheries and it is unlikely that an offshore commercial crustacean (i.e., lobster) fishery will develop, as the topography beyond three miles in most locations has limited lobster habitat and access is difficult. Should such a lobster fishery develop, however, the potential costs to fishermen would be minimal (i.e., no more than those associated with permitting and reporting, discussed below). Also affected would be future participants in the bottomfish and crustacean fisheries around the PRIA, but available information indicates that there are no current participants in these fisheries, either.

The largest potential impact to affected participants would be compliance costs associated with new Federal permitting and reporting requirements. There is no monetary cost for these permits, but a time burden of 30 minutes is required for each permit application and renewal. The completion of Federal reporting forms will be required for each fishing trip, with an associated time cost of 5 minutes per reporting action. Lesser and unquantifiable impacts may result from the future prohibition of the use of destructive fishing gear (e.g., bottom set trawls, poisons and explosives) in the current or future CNMI and PRIA bottomfish fisheries, and the future prohibition of the use of non-selective gear in any future NMI precious corals fishery. There is no evidence that such gears are in use at this time, so any future prohibition against using such gear would have no immediate impact on current fishery participants.

Because there are no management actions that affect operations of the fishery, other than providing for potential data collection, there will be no significant reductions in profitability for a substantial number of small entities in any user groups, and there will be no disproportionate impacts between gear types, vessels, or port of landing.

The proposed rule does not impose impacts on a substantial number of small entities. The proposed action is administrative in nature and will not impact operations of the fishery. Most vessels in the CNMI fishery are small vessels that operate in nearshore areas, so the majority of small entities in the CNMI will be unaffected by the action. A very small proportion of larger vessels that may be impacted would be subject to the permit and reporting requirements of the action.

The CNMI fishery is characterized based on data collected through the Commercial Purchase Database, which indirectly records actual landings by recording all local fish sales to commercial establishments. This data collection program is dependant on voluntary participation by first level purchasers of locally caught fresh fish to record purchases on specially designed invoices. These figures are then expanded by 30 percent to represent the CNMI as a whole, assuming 60 percent coverage of the commercial sales on Saipan, and that Saipan is 90 percent of the total market.

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

This proposed rule contains a collection-of-information requirement

subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The public reporting burden for the permit application process is 30 minutes per application. In the crustaceans fishery, it is estimated that one permit application would be submitted annually for the permit area, resulting in a paperwork burden of 30 min/yr. In the bottomfish fishery, it is estimated that no more than five permit applications would be received annually for the permit area, resulting in a paperwork burden of 2.5 hr/yr. In the precious corals fishery, it is estimated that one permit would be applied for annually for the permit area, resulting in 30 min/yr in paperwork burden. Therefore, the total paperwork burden of these collections of information would be no more than four hours annually. The public burden for the proposed reporting requirements is five minutes per daily logsheet. It is estimated that eight vessels would be subject to the reporting requirement at any given time, and that each vessel would fish, on average, no more than 50 days/yr, resulting in a total paperwork burden of approximately 35 hr/yr. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see ADDRESSES), and email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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

Administrative practice and procedure, American Samoa, Fisheries,

Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: June 20, 2006.

**James W. Balsiger,**

*Acting 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.*

In § 665.12, the definitions for “Crustaceans management area”, “Crustaceans permit area 3”, and “Crustaceans receiving vessel” are revised, the definitions of “Crustaceans permit area 4”, “Pacific Remote Island Areas bottomfish fishing permit”, and “Pacific Remote Island Areas crustacean fishing permit” are added, and under the definition of “Precious coral permit area” paragraph (4)(v) is added to read as follows:

#### § 665.12 Definitions.

\* \* \* \* \*

*Crustaceans management area* means the EEZ waters around American Samoa, the CNMI, Guam, Hawaii, and the PRIA.

\* \* \* \* \*

*Crustacean Permit Area 3 (Permit Area 3)* means the EEZ around Guam and American Samoa, and the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI. *Crustaceans Permit Area 4 (Permit Area 4)* means the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

\* \* \* \* \*

*Crustaceans receiving vessel* means a vessel of the United States to which lobsters taken in the crustaceans management area are transferred from another vessel.

\* \* \* \* \*

*Pacific Remote Island Areas (PRIA) bottomfish fishing permit* means the permit required by § 665.61 to use a vessel to fish for bottomfish management unit species (MUS) in the EEZ, or to land bottomfish MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of waters around Midway Atoll.

*Pacific Remote Island Areas (PRIA) crustacean fishing permit* means the

permit required by § 665.41 to use a vessel to fish for crustacean management unit species (MUS) in the EEZ, or to land crustacean MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of waters around Midway Atoll.

\* \* \* \* \*

*Precious coral permit area* \* \* \*

(4) \* \* \*

(v) Permit Area X-P-CNMI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

\* \* \* \* \*

3. In § 665.14, paragraph (a) is revised to read as follows:

#### **§ 665.14 Reporting and recordkeeping.**

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 665.81, or 665.602 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hr after the completion of each fishing day. Each form must be signed and dated by the fishing vessel operator. For the fisheries managed under §§ 665.21, 665.41, and 665.81, the original logbook form for each day of the fishing trip must be submitted to the Regional Administrator within 72 hr of each landing of MUS, unless the fishing was authorized under a PRIA troll and handline permit, a PRIA crustaceans fishing permit, or a PRIA precious corals fishing permit, in which case the original logbook form for each day of fishing within the PRIA EEZ waters must be submitted to the Regional Administrator within 30 days of each landing of MUS. For fisheries managed under § 665.602, the original logbook form for each day of the fishing trip must be submitted to the Regional

Administrator within 30 days of each landing of MUS.

\* \* \* \* \*

4. In § 665.41, paragraph (a)(2) is revised to read as follows:

#### **§ 665.41 Permits.**

(a) \* \* \*

(2) The owner of any vessel used to fish for lobster in Permit Area 2, Permit Area 3, or Permit Area 4, must have a permit issued for that vessel.

\* \* \* \* \*

5. In § 665.42, paragraph (c) is added to read as follows:

#### **§ 665.42 Prohibitions.**

\* \* \* \* \*

(c) In Permit Area 3 and Permit Area 4, it is unlawful for any person to refuse to make available to an authorized officer or employee of NMFS designated by the Regional Administrator for inspection and copying any records that must be made available in accordance with § 665.14(f)(2).

6. In § 665.61, paragraph (a)(1) is revised to read as follows:

#### **§ 665.61 Permits.**

(a) \* \* \*

(1) The owner of any vessel used to fish for bottomfish management unit species in the Northwestern Hawaiian Islands Subarea or Pacific Remote Island Areas Subarea must have a permit issued under this section and the permit must be registered for use with that vessel.

\* \* \* \* \*

7. In § 665.62 paragraph (b) is revised, and paragraph (f) is added to read as follows:

#### **§ 665.62 Prohibitions.**

\* \* \* \* \*

(b) Fish for, or retain on board a vessel, bottomfish management unit species in the Hoomalu Zone, the Mau Zone, or the Pacific Remote Island Areas without the appropriate permit registered for use with that vessel issued under § 665.13.

\* \* \* \* \*

(f) Falsify or fail to make or file all reports of bottomfish management unit species landings taken in the Pacific Remote Island Areas, containing all data in the exact manner, as specified in § 665.14(a).

8. In § 665.69, paragraphs (a) introductory text, (b), and (c) are revised, and paragraphs (a)(6), (a)(7), and (a)(8) are added, to read as follows:

#### **§ 665.69 Management subareas.**

(a) The bottomfish fishery management area is divided into eight subareas with the following designations and boundaries:

\* \* \* \* \*

(6) CNMI Inshore Area means that portion of the EEZ shoreward of 3 nautical miles of the shoreline of the CNMI.

(7) CNMI Offshore Area means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(8) Pacific Remote Island Areas means that portion of the EEZ seaward of the Pacific Remote Island Areas, with the exception of Midway Atoll.

(b) The inner boundary of each fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, the Territory of Guam and the Commonwealth of the Northern Mariana Islands.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The boundary between the fishery management areas of Guam and the Northern Mariana Islands CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI Northern Mariana Islands.

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