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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 170120106-7999-01]

RIN 0648-XF186

Pacific Island Fisheries; 2017 Annual Catch Limits and Accountability Measures

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes annual catch limits (ACLs) for Pacific Island crustacean, precious coral, and territorial bottomfish fisheries, and accountability measures (AMs) to correct or mitigate any overages of catch limits. The proposed ACLs and AMs would be effective for fishing year 2017. The proposed ACLs and AMs support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: NMFS must receive comments by November 14, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0012, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0012>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the proposed ACLs and AMs. Copies of the environmental analyses and other supporting documents are available at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Sarah Ellgen, NMFS PIR Sustainable Fisheries, 808-725-5173.

SUPPLEMENTARY INFORMATION: Fisheries in the U.S. Exclusive Economic Zone (EEZ, or Federal waters) around the U.S. Pacific Islands are managed under archipelagic fishery ecosystem plans (FEPs) for American Samoa, Hawaii, the Pacific Remote Islands, and the Mariana Archipelago (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)). A fifth FEP covers pelagic fisheries. The Western Pacific Fishery Management Council (Council) developed the FEPs, and NMFS implemented them under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Each FEP contains a process for the Council and NMFS to specify ACLs and AMs; that process is codified at Title 50, Code of Federal Regulations, Section 665.4 (50 CFR 665.4). The regulations require NMFS to specify, every fishing year, an ACL for each stock and stock complex of management unit species (MUS) in an FEP, as recommended by the Council and considering the best available scientific, commercial, and other information about the fishery. If a fishery exceeds an ACL, the regulations require the Council to take action, which may include reducing the ACL for the subsequent fishing year by the amount of the overage, or other appropriate action.

NMFS proposes to specify ACLs for the crustacean and precious corals MUS in American Samoa, Guam, the CNMI, and Hawaii, and the bottomfish MUS in American Samoa, Guam, and the CNMI for fishing year 2017. The fishing year for each fishery began on January 1 and ends on December 31, except for precious coral fisheries, which began July 1 and ends on June 30 next year.

In this action, NMFS is not proposing to specify 2017 ACLs for Hawaii Kona crab and non-Deep 7 bottomfish, or coral reef ecosystem MUS in all island areas. This is because NMFS has new information for those MUS that may require additional environmental analyses to support the Council's recommendations. NMFS would propose those ACL specifications in a separate action(s). In addition, NMFS specified the 2017-2018 ACL and AM

for Hawaii Deep 7 bottomfish in June 2017 (82 FR 29778, June 30, 2017).

NMFS based the proposed specifications for crustacean, precious coral, and territorial bottomfish MUS on recommendations from the Council at its 164th meeting held October 21-22, 2015, its 166th meeting held June 6-10, 2016, and its 170th meeting held June 19-22, 2017. For this action, the Council recommended 36 ACLs: Seven each in American Samoa, Guam, and the CNMI, and 15 in Hawaii. The Council also recommended that NMFS specify multi-year ACLs and AMs in fishing years 2015-2018. NMFS proposes to implement the specifications for each year separately, prior to each fishing year. NMFS previously implemented the 2016 specifications for bottomfish, crustacean, precious coral, and coral reef ecosystem MUS (82 FR 18716, April 21, 2017). All of the proposed 2017 ACLs in this action would be the same as those specified in 2016 (82 FR 18716, April 21, 2017). NMFS also proposes to specify the same AMs as it did in 2016.

Data from these fisheries for fishing year 2016 indicate that catches from each fishery in 2016 did not exceed the fishery's ACL, with the exception of the CNMI slipper lobsters. NMFS proposes to specify an ACL of 60 lb for CNMI slipper lobsters, which is the same ACL that NMFS implemented in 2016, even though the average three-year catch for this fishery exceeded the ACL. For CNMI slipper lobsters, there is no OFL or maximum sustainable yield (MSY) estimate. Prior to 2016, there were only three years (2007-2009) of available catch information for slipper lobsters in the CNMI. Therefore, in 2014, at its 116th meeting, the SSC recommended a proxy for calculating the ACL for the CNMI slipper lobster stock complex. Using a catch-to-habitat-based proxy comparing data from the Hawaii slipper lobster fishery (the only area that has specifically documented harvesting of slipper lobster), the Council recommended setting an ACL for the CNMI slipper lobsters for 2016-2018 at a level equal to ABC, that is, 60 lb.

In 2015, NOAA started a pilot program to improve commercial vendor reporting in the CNMI. The Territory Science Initiative was designed to improve the data vendors submit to commercial receipt books, which track, among other stocks, the slipper lobster fishery. NMFS staff trained vendors to complete receipt books and incorporate the process into their day-to-day business routines. The program proved to be effective, and in 2016, the CNMI commercial receipt book program documented 304 lb of slipper lobsters sold by local fishermen. In comparison,

there have been no reported catches or sales of slipper lobster in the CNMI from 2010–2015.

The Council reviewed the 2016 CNMI slipper lobster fishery performance at its 170th meeting held June 19–22, 2017. The Council noted that the 304 lb reported catch in 2016, combined with zero reported catch in the past two years, resulted in a three-year average catch of 101 lb, which exceeded the ACL by 41 lb. The Council determined that the increase in reported catch was due to the Territory Science Initiative and the associated improvements in catch reporting, and not due to actual increase in harvest. The Council also concluded that the overage was not likely to have had an impact on stock sustainability or result in overfishing based on existing stock data. Based on the status of the stock, the 2016 AM was not applied, and the Council instead recommended maintaining the 2017 CNMI slipper lobster ACL at 60 lb.

The Final Environmental Assessment (EA) for this action supports this determination. In the EA, NMFS concluded that the current level of catch of slipper lobster in the CNMI was not likely to result in overfishing as there are no clear trends indicating that lobster stocks in the CNMI have been

declining. (EA Section 3.2.3). NMFS concluded that even if no ACL were specified for this fishery, the level of slipper lobster catch would be expected to remain small. NMFS also determined that an ACL of 60 lb, even if exceeded, would not result in any changes in fishing and would not be expected to have effects on the fishery different from if no ACL were specified.

In this proposed rule, NMFS is not proposing ACLs for MUS that are currently subject to Federal fishing moratoria or prohibitions. These MUS include all species of gold coral (78 FR 32181, May 29, 2013), the three Hawaii seamount groundfish (pelagic armorhead, alfonsin, and raftfish (75 FR 69015, November 10, 2010), and deepwater precious corals at the Westpac Bed Refugia (75 FR 2198, January 14, 2010). The current prohibitions on fishing for these MUS serve as the functional equivalent of an ACL of zero.

Additionally, NMFS is not proposing ACLs for bottomfish, crustacean, precious coral, or coral reef ecosystem MUS identified in the Pacific Remote Islands Area (PRIA) FEP. This is because fishing is prohibited in the EEZ within 12 nm of emergent land, unless authorized by the U.S. Fish and Wildlife

Service (USFWS) (78 FR 32996, June 3, 2013). To date, NMFS has not received fishery data that would support any such approvals. In addition, there is no suitable habitat for these stocks beyond the 12-nm no-fishing zone, except at Kingman Reef, where fishing for these resources does not occur. Therefore, the current prohibitions on fishing serve as the functional equivalent of an ACL of zero. However, NMFS will continue to monitor authorized fishing within the Pacific Remote Islands Monument in consultation with USFWS, and may develop additional fishing requirements, including monument-specific catch limits for species that may require them.

NMFS is also not proposing ACLs for pelagic MUS at this time, because NMFS previously determined that pelagic species are subject to international fishery agreements or have a life cycle of approximately one year and, therefore, are statutorily excepted from the ACL requirements.

Proposed 2017 Annual Catch Limit Specifications

The following four tables list the proposed ACL specifications for 2017.

TABLE 1—AMERICAN SAMOA

Fishery	Management unit species	Proposed ACL specification (lb)
Bottomfish	Bottomfish multi-species stock complex	106,000
Crustacean	Deepwater shrimp	80,000
	Spiny lobster	4,845
	Slipper lobster	30
	Kona crab	3,200
Precious Coral	Black coral	790
	Precious corals in the American Samoa Exploratory Area	2,205

TABLE 2—MARIANA ARCHIPELAGO—GUAM

Fishery	Management unit species	Proposed ACL specification (lb)
Bottomfish	Bottomfish multi-species stock complex	66,000
Crustaceans	Deepwater shrimp	48,488
	Spiny lobster	3,135
	Slipper lobster	20
	Kona crab	1,900
Precious Coral	Black coral	700
	Precious corals in the Guam Exploratory Area	2,205

TABLE 3—MARIANA ARCHIPELAGO—CNMI

Fishery	Management unit species	Proposed ACL specification (lb)
Bottomfish	Bottomfish multi-species stock complex	228,000
Crustacean	Deepwater shrimp	275,570
	Spiny lobster	7,410

TABLE 3—MARIANA ARCHIPELAGO—CNMI—Continued

Fishery	Management unit species	Proposed ACL specification (lb)
Precious Coral	Slipper lobster	60
	Kona crab	6,300
	Black coral	2,100
	Precious corals in the CNMI Exploratory Area	2,205

TABLE 4—HAWAII

Fishery	Management unit species	Proposed ACL specification (lb)
Crustacean	Deepwater shrimp	250,773
	Spiny lobster	15,000
Precious Coral	Slipper lobster	280
	Auau Channel black coral	5,512
	Makapuu Bed—Pink coral	2,205
	Makapuu Bed—Bamboo coral	551
	180 Fathom Bank—Pink coral	489
	180 Fathom Bank—Bamboo coral	123
	Brooks Bank—Pink coral	979
	Brooks Bank—Bamboo coral	245
	Kaena Point Bed—Pink coral	148
	Kaena Point Bed—Bamboo coral	37
	Keahole Bed—Pink coral	148
	Keahole Bed—Bamboo coral	37
	Precious corals in the Hawaii Exploratory Area	2,205

Accountability Measures

Each year, NMFS and local resource management agencies in American Samoa, Guam, the CNMI, and Hawaii collect information about MUS catches and apply them toward the appropriate ACLs. Pursuant to 50 CFR 665.4, when the available information indicates that a fishery is projected to reach an ACL for a stock or stock complex, NMFS must notify permit holders that fishing for that stock or stock complex will be restricted in Federal waters on a specified date. The restriction serves as the AM to prevent an ACL from being exceeded, and may include closing the fishery, closing specific areas, changing bag limits, or restricting effort.

However, local resource management agencies do not have the resources to process catch data in near-real time, so fisheries statistics are generally not available to NMFS until at least six months after agencies collect and analyze the data. Additionally, Federal logbook information and other reporting from fisheries in Federal waters is not sufficient to monitor and track catches for the evaluation of fishery performance against the proposed ACL specifications. This is because most fishing for bottomfish, crustacean, and precious coral MUS occurs in State or territorial waters, generally 0–3 nm from shore. For these reasons, NMFS proposes to continue to specify the

Council's recommended AM, which is to apply a three-year average catch to evaluate fishery performance against the proposed ACLs. Specifically, NMFS and the Council would use the average catch of fishing years 2015, 2016, and 2017 to evaluate fishery performance against the 2017 ACL for a particular fishery. At the end of each fishing year, the Council would review catches relative to each ACL. If NMFS and the Council determine that the three-year average catch for any fishery exceeds the specified ACL, NMFS would reduce the ACL in the subsequent year for that fishery by the amount of the overage.

Cultural Fishing in American Samoa

On March 20, 2017, in *Territory of American Samoa v. NMFS, et al.* (16–cv–95, *D. Haw.*), a Federal judge vacated and set aside a NMFS rule that amended the American Samoa Large Vessel Prohibited Area (LVPA) for eligible pelagic longliners. The Court held that the action was inconsistent with the “other applicable law” provision of the Magnuson-Stevens Act by not considering the protection and preservation of cultural fishing rights in American Samoa under the Instruments of Cession. The Instruments of Cession do not specifically mention cultural fishing rights, and the Court’s decision, although recognizing the need to protect those rights, does not define them. The

Council is currently reevaluating the LVPA rule, including options to define cultural fishing rights in American Samoa that are subject to preservation and protection. NMFS specifically invites public comments on this proposed action that address the impact of the proposed ACL and AM specifications on cultural fishing rights in American Samoa.

NMFS will consider public comments on the proposed ACLs and AMs and will announce the final specifications in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading, not postmarked or otherwise transmitted by that date. Regardless of the final ACL specifications and AMs, all other management measures will continue to apply in the fisheries.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that these proposed specifications are consistent with the applicable FEPs, 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 Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to these proposed specifications.

The proposed action would specify annual catch limits (ACLs) and accountability measures (AMs) for Pacific Island crustaceans, precious coral, and territorial bottomfish fisheries in American Samoa, Guam, Hawaii, and the CNMI for 2017. The proposed 2017 ACLs for MUS covered in this proposed action are identical to those specified in 2016 (82 FR 18716, April 21, 2017). NMFS is not proposing to specify 2017 ACLs for Kona crab or non-Deep 7 bottomfish in Hawaii or coral reef ecosystem MUS in any island area because NMFS has obtained new information for those MUS that may require the agency to conduct additional environmental analyses to support the Council's recommendations. NMFS will propose those ACL specifications in a separate action(s).

The vessels affected by this action are federally permitted to fish under the Fishery Ecosystem Plans for American Samoa, the Marianas Archipelago (Guam and the CNMI), and Hawaii. The numbers of vessels permitted under these Fishery Ecosystem Plans permitted by this action are as follows: American Samoa (0), Marianas Archipelago (16), and Hawaii (9). For Regulatory Flexibility Act (RFA)

purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all affected entities are small entities under the SBA 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 \$11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

Even though this proposed action would apply to a substantial number of vessels, this action should not result in significant adverse economic impact to individual vessels. NMFS and the Council are not considering in-season closures in any of the fisheries to which these ACLs apply because fishery management agencies are not able to track catch relative to the ACLs during the fishing year. As a result, fishermen would be able to fish throughout the entire year. In addition, the ACLs, as proposed, would not change the gear types, areas fished, effort, or participation of the fishery during the 2017 fishing year. A post-season review of the catch data would be required to

determine whether any fishery exceeded its ACL by comparing the ACL to the most recent three-year average catch for which data is available. If an ACL is exceeded, the Council and NMFS would take action in future fishing years to correct the operational issue that caused the ACL overage. NMFS and the Council would evaluate the environmental, social, and economic impacts of future actions, such as changes to future ACLs or AMs, after the required data are available. Specifically, if NMFS and the Council determine that the three-year average catch for a fishery exceeds the specified ACL, NMFS would reduce the ACL for that fishery by the amount of the overage in the subsequent year.

The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations, or government jurisdictions. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed action is exempt from review under E.O. 12866.

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

Dated: October 23, 2017.

Samuel D. Rauch III,

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

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