

ensure total harvest remains below the ABC.

Information on the fishery and the stock assessment are found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2008–09 Fishing Season* (see **ADDRESSES**).

The harvest control rule formula in the FMP uses the following factors to determine the ABC:

1. *Biomass*. The estimated stock biomass of Pacific mackerel age one and above for the 2008–2009 management season is 264,732 mt.

2. *Cutoff*. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Distribution*. The portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction*. The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established this at 30 percent.

Classification

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

These proposed specifications are exempt from review under 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 as follows:

The purpose of this proposed rule is to implement the 2008–2009 HG for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific mackerel fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the ABC, from which the HG is then derived.

Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast which primarily includes the fisheries for Pacific sardine, Northern anchovy, Jack mackerel and Market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 N. latitude; Point Arena, California) of the fishery. Sixty-two vessels are currently

permitted in the Federal CPS limited entry fishery off California. These vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of \$4.0 million. This proposed rule has an equal effect on all of these small entities. Therefore, there would be no disproportionate impacts on large and small business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2007/2008 fishing year, the HG was set at 40,000 mt with an estimated ex-vessel value of approximately \$5.3 million. Around 6,200 mt of this HG was actually harvested during the 2007/2008 fishing season valued at an estimated \$900,000.

The proposed harvest guideline for the 2008/2009 Pacific mackerel fishing season (July 1, 2008 through June 30, 2009) is 40,000 metric tons (mt). This HG recommendation is the same as the HG recommended by the Council and approved by NMFS for the 2007/2008 fishing year. If the fleet were to take the entire 2008/2009 HG, and assuming no change in the coastwide average ex-vessel price per mt of \$146, the potential revenue to the fleet would be approximately \$5.8 million. A potential lack of availability of the resource to the fishing fleet however, could cause a reduction in the amount of Pacific mackerel harvested, in which case profits would be lower than if the total HG were taken. Additionally, if there is no change in market conditions (i.e., a lack in demand for Pacific mackerel product), it is not likely that the full HG will be taken during the 2008–2009 fishing year, in which case profits will again be lower than if the entire HG were taken. However, because the average U.S. harvest since the year 2000 is only 5,700 mt, the potential reduced revenues would not be a result of the proposed HG.

NMFS does not anticipate a drop in profitability based on this rule because it allows fishermen to harvest the same amount of fish as the previous fishing season. Based on the disproportionality and profitability analysis above, this rule if adopted, will not have a significant economic impact on a substantial number of these small entities.

As a result, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

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

Dated: August 14, 2008.

Samuel D. Rauch III,
Deputy Assistant Administrator For
Regulatory Programs, National Marine
Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AV28

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures for the Northern Mariana Islands

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the Fishery Management Plan for the Bottomfish & Seamount Groundfish Fisheries of the Western Pacific Region. If approved by the Secretary of Commerce, Amendment 10 would establish Federal permitting and reporting requirements for all commercial bottomfish fishing in the U.S. Exclusive Economic Zone (EEZ) around the Commonwealth of the Northern Mariana Islands (CNMI). The amendment would also close waters within 50 nm (80.5 km) of the southern CNMI and within 10 nm (18.5 km) of the northern island of Alamagan to bottomfish fishing by vessels over 40 ft (12.2 m) in length, which also would be required to carry and operate shipboard vessel monitoring system units, and whose operators would be required to submit bottomfish sales reports in addition to catch reports. The proposed amendment would ensure adequate collection of information about the CNMI bottomfish fishery, provide for sustained community participation in the CNMI bottomfish fishery, and encourage consistent availability of locally-caught bottomfish to CNMI consumers. Combined, these measures are intended to prevent the depletion of bottomfish stocks in the CNMI, and sustain the fisheries that depend on them.

DATES: Comments on Amendment 10, which includes an environmental assessment, must be received by October 20, 2008.

ADDRESSES: Comments on the amendment, identified by 0648–AV28, 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; 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 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 Amendment 10, including an environmental assessment, are available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

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

SUPPLEMENTARY INFORMATION: This **Federal Register** document is accessible via the the Office of the **Federal Register** website www.gpoaccess.gov/fr.

The bottomfish fishery around the CNMI is managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), which was developed by the Council, and approved and implemented by NMFS. The Council has submitted Amendment 10 to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act. This notice announces that the amendment is available for public review and comment for 60 days. NMFS will consider public comments received

during the comment period in determining whether to approve, partially approve, or disapprove Amendment 10.

CNMI nearshore areas have been fished for years by bottomfish fishermen who engage in a mix of subsistence, recreational, and small-scale commercial fishing. These fishermen typically operate small vessels (less than 25 ft (7.6 m)), and tend to fish more in the summer months when weather and sea conditions are calmer. Most of these small vessels target shallow-water bottomfishes, but some also target deep-water species. The catch from these small vessels is usually not exported, but is destined for local markets.

In addition to these small vessels, vessels over 40 ft (12.2 m) in length also target deep-water bottomfish at offshore seamounts and banks. In 2006, there were six of these larger vessels targeting bottomfish around the CNMI, and one in 2007. Landings are offloaded on Saipan and in other CNMI commercial ports, and are often exported by air to Japan.

The CNMI is close to Guam, and it is possible for large bottomfish vessels based in Guam to travel to fishing grounds in the CNMI. NMFS recently implemented a final rule that prohibits large vessels (greater than 50 ft (15.2 m)) from bottomfish fishing within 50 miles (80.5 km) around Guam (71 FR 64474; November 2, 2006). Without similar closed areas around the CNMI, operators of large Guam-based vessels may choose to fish for bottomfish within U.S. EEZ waters around the CNMI. This could result in excessive fishing pressure on bottomfish stocks at nearshore banks, potentially threatening both the fish stocks and the fisheries that have historically been dependent on these resources.

In addition to the possibility of Guam-based vessels entering the CNMI bottomfish fishery, the Council is concerned about several other issues regarding bottomfish fishing in the CNMI. First, existing data collection programs in the CNMI are insufficient to

comprehensively monitor catches and determine the impacts of the fishery on the stock(s) being harvested, or to determine the species composition and amount of discarded bycatch. Second, large bottomfish vessels need to harvest relatively large catches to cover operational costs. These large catches could deplete nearshore stocks, which would threaten sustained community participation in the bottomfish fishery. Small vessels would not be able to continue operating if catch rates were significantly reduced due to heavy fishing by the larger vessels. Finally, traditional patterns of supply and consumption of bottomfish in the local community would be disrupted by reduced community participation and/or large exports of bottomfish fish from the CNMI by the operators of the large vessels.

In response to these concerns, the Council developed Amendment 10 with the following objectives: (1) ensure that adequate information is routinely collected on the CNMI's offshore bottomfish fishery; (2) provide for sustained community participation in the CNMI bottomfish fishery; and (3) encourage the consistent availability of locally caught deepwater bottomfish to CNMI markets and consumers.

Public comments on the proposed amendment must be received by October 20, 2008 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. A proposed rule to implement the amendment has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulation in the near future.

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

Dated: August 14, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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