

**§ 84.46 Quality system records retention.**

The applicant shall establish a retention period for the records required by section 4.2.4 of the ISO Q9001:2000 standard that is at least as long as the expected service life of the respirator's major components; in no case shall the retention period be less than 24 months.

Dated: July 23, 2008.

**Michael O. Leavitt,**

Secretary, Department of Health and Human Services.

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

[Docket No. 0811281532-81534-01]

RIN 0648-XL64

**Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; 2008-09 Main Hawaiian Islands Bottomfish Total Allowable Catch**

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

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

**SUMMARY:** NMFS proposes to establish a total allowable catch (TAC) for the 2008-09 fishing year of 241,000 lb (109,316 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 bottomfish in the Hawaiian Archipelago.

**DATES:** Comments must be received by December 26, 2008.

**ADDRESSES:** Comments on this proposed specification, identified by 0648-XL64, 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 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), including a Regulatory Impact Review (RIR), was prepared that describes the impact on the human environment that would result from this proposed action. Copies of the EA are available from [www.regulations.gov](http://www.regulations.gov), or William L. Robinson (see ADDRESSES).

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

**SUPPLEMENTARY INFORMATION:** This **Federal Register** document is also accessible at the Office of the Federal Register Web site [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 (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 local stock depletion in the MHI Management Subarea are precautionary. The MHI Management Subarea refers to the portion of U.S. EEZ around the Hawaiian Archipelago lying to the east of 161° 20' west longitude. For all the bottomfish TACs considered in this specification, the estimated risk of overfishing in the Hawaiian Archipelago is zero.

On April 4, 2008, NMFS published a final rule (73 FR 18457) that implemented Bottomfish FMP Amendment 14. The provisions established under Amendment 14 include a non-commercial bag limit of

five Deep 7 bottomfish (all species combined) per fisherman per trip. Amendment 14 also established a requirement for NMFS to set an annual TAC limit for Deep 7 bottomfish in the MHI, 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 omalu 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.

Last year (2007-08 fishing year), the Council recommended and NMFS implemented a Deep 7 bottomfish TAC of 178,000 lb (80,739 kg) (73 FR 18718; April 7, 2008). Monitoring of the commercial fishery indicated that the MHI bottomfish fishery harvested the TAC in April 2008. In accordance with the regulations at § 665.72, and as a result of reaching the TAC, NMFS published a temporary rule closing the non-commercial and commercial bottomfish fisheries on April 16, 2008 (73 FR 18717; April 7, 2008), and a related correction notice (73 FR 20001; April 14, 2008).

At its 142nd meeting in Honolulu in June 2008, the Council learned that new data were available for the bottomfish fishery that would be integral to the analysis performed by NMFS to update the bottomfish stock assessment. An updated stock assessment provides the best scientific basis upon which the Council can make its recommendation on a TAC, as required by regulation § 665.72(a) and Magnuson-Stevens Act National Standard 2. Because the updated bottomfish stock assessment was not available at the June 2008 meeting, the Council did not recommend a 2008-09 TAC. Instead,

based on a recommendation from the Council, NMFS delayed opening the fishery until November 15, 2008 (73 FR 50572; August 27, 2008).

An updated Hawaiian bottomfish stock assessment was available at the Council's 143rd meeting in October 2008. After consideration of the assessment, risks of overfishing, recommendations from the Council's Scientific and Statistical Committee, and input from the public, the Council recommended a TAC for the 2008–09 MHI bottomfish fishing year of 241,000 lb (109,316 kg). 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**.

Regardless of the final TAC specification, all other management measures will continue to apply in the MHI bottomfish fishery. The MHI bottomfish fishery re-opened on November 15, 2008, and will continue until August 31, 2009, 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.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed specification, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this specification. This specification does not duplicate, overlap, or conflict with other Federal rules. There are no reporting, recordkeeping, or other compliance requirements in the proposed specification. There are no disproportionate economic impacts from this specification based on home port, gear type, or relative vessel size. The analysis follows:

#### Description and Estimate of the Number of Small Entities to which the Specification Applies

There are approximately 380 vessels engaged in the commercial harvest of MHI bottomfish. Based on 2000–03 data, the aggregate gross receipts for these vessels were

\$1.47 million, with average gross receipts per vessel of \$3,870 annually. However, 318 of these vessels recorded revenues of under \$2,175. 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.

#### Description of Alternatives for the 2008–09 Fishing Year

*Alternative 1* (No Action). The MHI Deep 7 bottomfish TAC would be set at 178,000 lb (80,739 kg). According to the latest stock assessment, this TAC represents zero percent risk of bottomfish overfishing in either the Hawaiian Archipelago or the MHI Management Subarea. With the fishing year opening on November 15, 2008, it is projected that the MHI Deep 7 bottomfish TAC under this alternative may be reached in May of 2009 given the most recent average catch efforts.

*Alternative 2*. The MHI Deep 7 bottomfish TAC would be set at 227,000 lb (102,965 kg). This TAC represents zero percent risk of archipelagic overfishing and a 25 percent risk of overfishing in the MHI Management Subarea during 2008–09. It is projected that the fishing year under this alternative may last until July 2009.

*Alternative 3* (Preferred). The MHI Deep 7 bottomfish TAC would be set at 241,000 lb (109,316 kg). This TAC represents zero risk of archipelagic overfishing and an approximate 40 percent risk of MHI Management Subarea bottomfish overfishing in the 2008–09 fishing year. The fishing year under this alternative is projected to remain open until late July 2009.

*Alternative 4*. The MHI Deep 7 bottomfish TAC would be set at 249,000 lb (112,945 kg). This TAC represents no risk of archipelagic overfishing, while representing an approximate 50 percent risk of overfishing of MHI Management Subarea bottomfish in 2008–09. The fishing year under this alternative is projected to remain open until early August 2009.

*Alternative 5*. The MHI Deep 7 bottomfish TAC would be set at 271,000 lb (122,924 kg). This TAC represents zero risk of archipelagic overfishing while representing about a 75 percent chance of overfishing MHI Management Subarea bottomfish stocks. The fishing year under this alternative is projected to last through August 2009, and, therefore, may not close at all under this alternative.

Economic Impacts of the Specification

Using the same TAC as the 2007–08 bottomfish fishing year, Alternative 1 would have the TAC specified as 178,000 lb (80,739 kg) of MHI Deep 7 bottomfish, totaling \$917,000 in gross revenues (based on a 2008 estimated average price of \$5.15 per lb or \$11.35 per kg) for the 2008–09 fishery. This would represent an average of \$2,412 per vessel, assuming all 380 commercially licensed MHI bottomfish vessels were equally active. This status quo alternative is projected to have a zero percent risk of overfishing associated with the Deep 7 bottomfish TAC based on the most recent stock and risk assessments.

Alternatives 2–5 would all have positive short-term economic benefits to vessel owners based on an increase in revenues associated with greater TACs. At 2008 average prices for bottomfish, a proposed Deep 7 MHI bottomfish TAC of 271,000 lb (122,924 kg) for Alternative 5 would yield \$1.4 million in gross revenues which is 52 percent more than the estimated revenues projected under Alternative 1 (i.e., status quo). However, in comparison to the other alternatives considered for this action, Alternative 5 represents the highest risk (est. 75 percent) of bottomfish overfishing to occur in the MHI during 2008–09.

A more conservative Deep 7 MHI bottomfish TAC would be adopted under Alternatives 2, 3, or 4, with the associated risk of overfishing MHI Deep 7 bottomfish being 25, 40, and 50 percent, respectively, during 2008–09. Alternative 2 would have the Deep 7 MHI bottomfish TAC specified as 227,000 lb (102,965 kg) during the 2008–09 fishing year. Total gross revenues for the MHI bottomfish fleet under Alternative 2 is estimated to be around \$1.17 million, or averaged at \$3,000 per vessel using an average bottomfish price of \$5.15 per lb (\$11.35 per kg). This represents an economic benefit to fishermen with a 28 percent increase in potential revenues compared to the status quo. Alternative 2 is associated with a 25 percent risk of MHI bottomfish overfishing in 2008–09, given the most recent stock assessment. Alternative 3, the Preferred Alternative, would have the Deep 7 MHI bottomfish TAC specified as 241,000 lb (109,316 kg) which is associated with an estimated risk of overfishing the MHI bottomfish stocks of 40 percent (2008–09). The expected total fleet-wide gross revenues associated with Alternative 3 would be around \$1.24 million, or \$3,266 per vessel, which would be a 35 percent increase in revenues over the status quo and a six percent marginal increase over Alternative 2. Alternative 4 would have the TAC specified as 249,000 lb (112,945 kg), which is associated with a 50 percent risk of overfishing MHI bottomfish in 2008–09 given the latest stock assessment. Total gross revenues under this alternative would be about \$1.28 million (\$3,375 per vessel), which is a 40 percent increase in revenues compared to the status quo (Alternative 1), and a 3.3 percent marginal increase in revenues compared with the Preferred Alternative 3.

This analysis assumes that only commercial MHI Deep 7 landings are counted toward the 2008–09 TAC. Although

data reporting requirements for non-commercial fishing have been established, it is expected that the non-commercial information will not be developed enough to generate meaningful projected estimates of 2008–09 non-commercial harvest.

#### Ceasing of Business Operations

The decision to cease fishing for bottomfish would depend on the ability of vessel owners to cover variable costs of operations in the short run. If costs of fuel and food remain at higher than normal levels, more vessels than normal would be expected to exit the fishery, especially in years when the TAC was low. In addition, as is pointed out in Amendment 14, low TACs could propel the fishery toward a “race for the fish,” putting downward pressure on prices and upward pressure on fuel and food costs, resulting in earlier than expected closures and larger number of vessels exiting the fishery prematurely.

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

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

Dated: December 4, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.*

[FR Doc. E8–29205 Filed 12–9–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0810141351–81451–01]

RIN 0648–XL28

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2009 and 2010 Harvest Specifications for Groundfish

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

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

**SUMMARY:** NMFS proposes 2009 and 2010 harvest specifications and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2009 and 2010 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands management area.

The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson–Stevens Fishery Conservation and Management Act.

**DATES:** Comments must be received by January 9, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XL28, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- **Mail:** P. O. Box 21668, Juneau, AK 99802.

- **Fax:** (907) 586–7557.

- **Hand delivery to the Federal Building:** 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (Final EIS), Record of Decision (ROD), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from NMFS at the mailing address above or from the Alaska Region website at <http://www.alaskafisheries.noaa.gov>. Copies of the final 2008 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the Bering Sea and Aleutian Islands (BSAI), dated November 2007, are available from the North Pacific Fishery Management Council (Council), 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, 907–271–2809, or from its website at <http://www.alaskafisheries.noaa.gov/npfmc/default.htm>.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** Federal regulations at 50 CFR part 679

implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the “other species” category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). Section 679.20(c)(1) further requires NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, prohibited species catch (PSC) allowances, and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, Amendment 80 allocations, and Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii). The proposed harvest specifications set forth in Tables 1 through 12 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final harvest specifications for 2009 and 2010 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2008 meeting, and (3) considering new information presented in the Final EIS and the final 2008 SAFE reports prepared for the 2009 and 2010 groundfish fisheries.

#### Other Actions Potentially Affecting the 2009 and 2010 Harvest Specifications

The Council submitted Amendment 73 to the FMP. NMFS published a proposed rule in the **Federal Register** on September 24, 2008 (73 FR 55010). This amendment would remove dark rockfish (*Sebastes ciliatus*) from the “other rockfish” category and from the FMP. The State of Alaska would assume management of dark rockfish, and the TAC of the “other rockfish” category would be slightly smaller than in previous years. The Council is considering a proposal that would allocate the Pacific cod TAC by Bering Sea subarea and Aleutian Islands (AI) subarea instead of a combined BSAI TAC, although associated fishery