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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 150908833-6738-02]

RIN 0648-BF37

Mariana Archipelago Fisheries; Remove the CNMI Medium and Large Vessel Bottomfish Prohibited Areas

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

ACTION: Final rule.

SUMMARY: This final rule removes the medium and large vessel bottomfish prohibited fishing areas in the Commonwealth of the Northern Mariana Islands (CNMI). Conditions in the fishery that led to establishing the prohibited areas are no longer present, and the restriction is no longer necessary. This rule also makes administrative housekeeping changes to the description of the CNMI management subarea and to the regulations for the CNMI management subarea crustacean fishing. The intent of this final rule is to improve the viability of the CNMI bottomfish fishery and promote optimum yield while preventing overfishing.

DATES: Effective [*insert date 30 days after publication in the FEDERAL REGISTER*].

ADDRESSES: The Western Pacific Fishery Management Council (Council) and NMFS prepared Amendment 4 to the Fishery Ecosystem Plan for the Marianas Archipelago that provides background information on this final rule. Amendment 4, including a final environmental assessment and regulatory impact review, is identified as NOAA-NMFS-2015-0115 and is available from *www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, NMFS PIRO Sustainable Fisheries, 808-725-5173.

SUPPLEMENTARY INFORMATION: Federal regulations currently prohibit medium and large vessels (40 ft and greater) from commercial fishing for bottomfish management unit species in certain Federal waters around the CNMI. The prohibited areas include waters within approximately 50 nm of the Southern Islands (i.e., Rota, Aguigan (alt. Aguijan), Tinian, Saipan, and Farallon de Medinilla) and within 10 nm of Alamagan Island. In 2008, the Council recommended, and NMFS implemented, the prohibited areas to prevent large bottomfish vessels based in Guam from traveling to CNMI fishing grounds. At the time, the Council was concerned

that the Guam vessels could negatively affect fish stocks and local fisheries through stock depletion, catch competition, and gear conflicts. You may read more about the establishment of the prohibited areas in the 2008 proposed rule (73 FR 51992; September 8, 2008) and final rule (73 FR 75615; December 12, 2008).

The CNMI bottomfish fishery has changed since 2008, and the conditions that led the Council and NMFS to establish the prohibited areas are no longer present. Large vessels from Guam have not shown interest in fishing for CNMI bottomfish. The prohibited areas may also be negatively affecting the CNMI bottomfish fishery. Only a few small vessels have been operating on a regular basis, and the few medium and large vessels have faced declining participation, possibly resulting from higher fuel costs that prevent them from traveling beyond the prohibited areas. The prohibited areas may be contributing to the potential under-utilization of the bottomfish resource in CNMI, and removing them may promote optimum yield.

To address fishery conditions resulting from the CNMI prohibited areas, the Council recommended that NMFS remove them. The Council and NMFS will continue to manage the fishery under a suite of management requirements that include the specification of annual catch limits and

accountability measures, post-season review of catches and effort, Federal permits, requirements for vessel markings, catch and sales reporting, and the vessel monitoring system. The fishing requirements for the Marianas Trench Marine National Monument also remain unchanged.

The Council and NMFS intend this final rule to improve the efficiency and economic viability of the CNMI bottomfish fishery. The Council and NMFS will annually review the effects of the action. Any future changes would be subject to additional environmental review and opportunity for public review and comment.

In addition to removing the prohibited areas, this final rule includes administrative housekeeping corrections to the description of the CNMI management subarea and to the CNMI permit area designation for crustacean fishing. First, prior to 2013, the CNMI management subarea was divided into an inshore area (the Exclusive Economic Zone, EEZ, within 3 nm of the shoreline) and an offshore area (the EEZ seaward of 3 nm from the shoreline). In 2013, under Public Law 113-34 (which amended Public Law 94-435) the United States transferred nearshore waters (0-3 nm) to the CNMI, so this distinction is no longer necessary. Second, the current regulations at § 665.442(a)(1) incorrectly refer to Permit Area 3, which is associated

with American Samoa. The correct reference for the CNMI is Crustacean Permit Area 5, and this rule corrects that reference.

Comments and Responses

On June 13, 2016, NMFS published a proposed rule and request for public comments (81 FR 38123). The comment period ended on July 28, 2016. NMFS did not receive any comments.

Changes from the Proposed Rule

There are no changes from the proposed rule.

Classification

The Regional Administrator, Pacific Islands Region, NMFS, determined that Amendment 4 is necessary for the conservation and management of the bottomfish fisheries of the Marianas Archipelago, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule (81 FR 38123, June 13, 2016), and does

not repeat it here. NMFS received no comments on this certification. However, NMFS has updated its analysis under a new small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411). This new size standard was established after the proposed rule was published.

On December 29, 2015, NMFS issued a final rule establishing the \$11 million standard. This standard is for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194) and became effective on July 1, 2016, to be used in place of the U.S. Small Business Administration (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules that are subject to the RFA after July 1, 2016.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using the former SBA size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are finfish commercial fishing businesses and were considered

small under the SBA size standards, and they all would continue to be considered small under the new standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action and the factual basis for the certification submitted during the proposed rule stage stands. As a result, a regulatory flexibility analysis is not required, and none was prepared

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Commonwealth of the Northern Mariana Islands, Mariana Archipelago Fisheries, Fisheries, Fishing, Guam, Permits, Reporting and recordkeeping requirements.

Dated: August 31, 2016

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

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

2. In § 665.402, revise paragraphs (b) and (c) to read as follows:

§ 665.402 Management subareas.

* * * * *

(b) *CNMI Management Subarea* means the EEZ seaward of the CNMI, with the inner boundary defined as a line coterminous with the seaward boundary of the CNMI.

(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 CNMI extends to those points that are equidistant between Guam and the island of Rota in the CNMI. CNMI and Guam management subareas are divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.403 [Amended]

3. In § 665.403, remove and reserve paragraph (b).

4. In § 665.405, revise paragraphs (e) and (f) and remove paragraphs (g) and (h).

The revisions read as follows:

§ 665.405 Prohibitions.

* * * * *

(e) Use a vessel to fish commercially for Mariana bottomfish MUS in the CNMI management subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.404(a)(2).

(f) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(b) when using a vessel to engage in commercial fishing for Mariana bottomfish MUS in the CNMI management subarea in violation of § 665.14(b).

6. In § 665.442, revise paragraph (a)(1) to read as follows:

§ 665.442 Permits.

(a) * * *

(1) The owner of any vessel used to fish for lobster in Crustacean Permit Area 5 must have a permit issued for such a vessel.

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[FR Doc. 2016-21422 Filed: 9/6/2016 8:45 am; Publication Date: 9/7/2016]