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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 170915903-7999-01]

RIN 0648-XF706

**Pacific Island Fisheries; 2017 Hawaii Kona Crab Annual
Catch Limit and Accountability Measure**

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

ACTION: Proposed specification; request for comments.

SUMMARY: NMFS proposes a 2017 annual catch limit (ACL) of 3,500 lb for Hawaii Kona Crab, and an accountability measure (AM) to correct or mitigate any overages of catch limits. The proposed ACL and AM support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: NMFS must receive comments by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0120, 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-2017-0120>, 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 <https://www.regulations.gov> 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 an environmental analysis that describes the potential impacts on the human environment that would result from the proposed ACL and AM. Copies of the environmental analyses and other supporting documents are available at <https://www.regulations.gov>.

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

SUPPLEMENTARY INFORMATION

The Kona crab fishery in the U.S. Exclusive Economic Zone (generally 3-200 nm from shore) around Hawaii is managed under Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP). The Western Pacific Fishery Management Council (Council) developed the FEP, and NMFS implemented the plan under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The 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.

The Council recommended that NMFS specify an ACL of 3,500 lb of Hawaii Kona crab for fishing year 2017, which began on January 1 and ends on December 31. The Council based its ACL recommendation on a recommendation of acceptable biological catch of 3,500 lb from its Scientific and Statistical Committee (SSC), and the results of an October 2015 stock assessment that included commercial catch data from 1970 through 2006. The stock assessment found that the Hawaii Kona crab stock had reached an overfished status (<50 percent of B_{MSY} , biomass at maximum sustainable yield) in 2006, and was likely still overfished in 2010. The assessment also included biomass projections for 2010-2030 under three commercial landings scenarios: zero lb, 7,000 lb, and 8,000 lb.

Hawaii State law prohibits retention of female crabs, but the assessment results included both males and females combined. The assessment acknowledged that the 2010-2030 stock status projections did not account for the effects of the State prohibition after September 2006 and, as a result, the projections are associated with a high degree of uncertainty. At a constant zero-lb annual harvest rate, the assessment predicted that the Kona crab stock would recover from overfished levels after 2015. At a constant 7,000-lb annual commercial harvest rate, the assessment

estimated that Kona crab biomass would increase above 50 percent of B_{MSY} by 2030 but explained that, due to uncertainty, there was a chance that stock biomass could potentially decline to zero lb by 2020. At a constant 8,000-lb annual harvest rate, the assessment predicted that stock biomass could reach zero lb by 2020.

In 2015, NMFS contracted the Center for Independent (CIE) experts to review the stock assessment. Both the CIE reviewers and NMFS Pacific Islands Fisheries Science Center (PIFSC) agreed with the evaluation of the fishery for 2006, and the conclusion that stock projections beyond 2006 probably do not accurately describe current Hawaii Kona crab stock size or structure. PIFSC also agreed with the CIE review that further work is needed to provide advice on the status of the population in more recent years. Therefore, PIFSC is planning to complete a benchmark assessment for Hawaii Kona crab in 2019, which could be available for management use in fishing year 2020.

In developing the proposed ACL recommendation, the Council also considered information indicating a 50:50 male to female landings ratio, and information suggesting that crabs disentangled from Kona crab may have injuries that could result in mortality rates as high as 100 percent if limbs are lost. Therefore, to meet the objective of

rebuilding stock biomass to levels above 50 percent of B_{MSY} , and limit total fishing mortality to 7,000 lb, the Council recommended an ACL of 3,500 lb.

As an AM, NMFS proposes to apply a three-year average catch to evaluate fishery performance against the proposed ACLs. Specifically, NMFS proposes to use the average catch of fishing years 2015, 2016, and 2017, to evaluate fishery performance against the 2017 ACL. If, after the end of the fishing year, NMFS and the Council determine that the three-year average catch exceeded the specified ACL, NMFS and the Council will reduce the ACL for that fishery by the amount of the overage in the subsequent year. The Council recommended an AM based on multi-year average catch data to reduce the influence of inter-annual variability in catch estimates in evaluating fishery performance against the ACL.

NMFS will consider public comments on the proposed ACL and AM and will announce the final specification 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 and AM specification, 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 this proposed specification is consistent with the FEP, 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 this proposed specification, 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 this proposed specification.

NMFS proposes to specify a 2017 annual catch limit (ACL) of 3,500 lb for Kona crab in Hawaii, as recommended by the Western Pacific Fishery Management Council (Council). The 2017 proposed ACL is based on updated scientific information made available to NMFS. The proposed ACL is much lower than the ACL implemented each year from

2012 and 2015, which had been 27,600 lb. NMFS did not implement an ACL for this stock in 2016.

This rule would affect participants in the commercial and non-commercial fisheries for Hawaii Kona crab. Kona crab landings averaged 2,658 lb from 2014-2016, with an estimated ex-vessel value of \$20,965, based on a price of \$5.99 per lb. The amount of Kona crab landed each year has generally declined since 2011, when 51 fishermen reported landing 10,883 lb. During the 2016 fishing year, 24 fishermen reported landing 2,577 lb. In 2015, 26 fishermen reported landing 2,332 lb. In 2014, 30 fishermen reported landing 3,067 lb.

Based on available information, NMFS has determined that all vessels in the commercial and non-commercial fisheries for Kona crab are small entities under the Small Business Administration's definition of a small entity. That is, they are engaged in the business of fish harvesting, independently owned or operated, not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million, the small business size standard for commercial fishing (NAICS Code: 11411). 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 closure in the Kona crab fisheries to which this ACL 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 the 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 action is exempt from review under E.O. 12866.

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

Dated: December 14, 2017.

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

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