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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 200204-0045]

RIN 0648-BJ41

Pacific Island Fisheries; 2019-2021 Annual Catch Limits and Accountability Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement main Hawaiian Islands (MHI) annual catch limits (ACLs) and accountability measures (AMs) for deepwater shrimp, precious corals, and gray jobfish (uku) in 2019-2021, and for Kona crab in 2019. The proposed ACLs and AMs support the long-term sustainability of Pacific Island fisheries.

DATES: NMFS must receive comments by [*INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER***].

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA-NMFS-2019-0124, 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-2019-1024>, 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 Regional Office (PIRO), 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 will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

NMFS prepared environmental analyses that describe potential impacts on the human environment. These analyses are available at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIRO Sustainable Fisheries, 808-725-5185.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage fisheries in the U.S. Exclusive Economic Zone (EEZ, or Federal waters) around the U.S. Pacific Islands under archipelagic fishery ecosystem plans (FEPs) for American Samoa, Hawaii, the Pacific Remote Islands, and the Mariana Archipelago (Guam and the CNMI). A fifth FEP covers pelagic fisheries. The Council developed the FEPs, and NMFS implemented them under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), with regulations at Title 50 Code of Federal Regulations, Part 665 (50 CFR 665).

Each FEP contains a process for the Council and NMFS to specify ACLs and AMs; that process is codified at 50 CFR 665.4. NMFS must specify an ACL and AM(s) 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 implement ACLs and AMs for MHI deepwater shrimp, precious corals, and uku for 2019-2021,

and for Kona crab for 2019 (see Table 1). The proposed rule is consistent with recommendations made by the Council at its October 2017 and October 2018 meetings. The Council recommended that NMFS implement ACLs and AMs for 2019, 2020, and 2021 for all stocks, except for MHI Kona crab, which they recommended that NMFS implement an ACL and AM only for 2019 because a new stock assessment is available to support ACL recommendations for this stock for 2020 and beyond. The fishing year for each fishery begins on January 1 and ends on December 31, except for precious coral fisheries, which begin July 1 and end on June 30 of the next year.

Table 1. Proposed ACLs for stocks in this proposed rule.

Stock	ACL (lb)	Year(s)
Deepwater shrimp	250,773	2019-2021
Kona crab	3,500	2019
Uku	127,205	2019-2021
Auau Channel - Black coral	5,512	2019-2021
Makapuu Bed - Pink and red coral	2,205	2019-2021
Makapuu Bed - Bamboo coral	551	2019-2021
180 Fathom Bank - Pink and red coral	489	2019-2021
180 Fathom Bank - Bamboo coral	123	2019-2021
Brooks Bank - Pink and red coral	979	2019-2021
Brooks Bank - Bamboo coral	245	2019-2021
Kaena Point Bed - Pink and red coral	148	2019-2021
Kaena Point Bed - Bamboo coral	37	2019-2021
Keahole Bed - Pink and red coral	148	2019-2021
Keahole Bed - Bamboo coral	37	2019-2021
Hawaii Exploratory Area - precious corals	2,205	2019-2021

As an AM for each stock, NMFS and the Council would evaluate the catch after each fishing year to determine if

the average catch of the three most recent years exceeded its ACL. If it did, the Council would recommend a reduction of the ACL of that fishery in the subsequent year equal to the amount of the overage. In the event that NMFS needs to reduce an ACL because a fishery exceeded its ACL, we would implement that AM through a separate rulemaking.

In addition to this post-season AM, the proposed rule would implement a new in-season AM for the uku fishery where, if NMFS projects that catch will reach the ACL, NMFS would close the commercial and non-commercial uku fisheries in Federal waters of the MHI for the remainder of the fishing year. This in-season AM would be implemented only for fishing years 2019 and 2020. The Council initially recommended this AM for uku, along with an ACL of 127,205 lb and the post-season AM, at the October 2017 meeting. This recommendation covered three fishing years: 2018, 2019, and 2020. At the October 2018 meeting, the Council updated the recommendations for uku for fishing years 2019 through 2021, but only recommended the ACL of 127,205 lb and the post-season AM. Because the October 2018 Council meeting did not address the in-season AM, this management measure will not be applied for fishing year 2021.

There is also an existing in-season AM for the precious coral fishery that would close individual coral

beds if the ACL for that bed is projected to be reached. The proposed rule makes housekeeping changes to the text pertaining to this AM that are described below.

For all stocks except uku, the proposed ACLs and AMs are identical to those most recently specified, in 2017. The Council did not recommend, and NMFS did not implement, ACLs and AMs for any of the these fisheries in 2018, while the Council and NMFS developed the amendment to its fishery ecosystem plans to reclassify certain MUS as ECS, which do not require ACLs and AMs. The proposed action is the first time that ACLs and AMs would be implemented for uku as a single-species stock.

Overall, NMFS does not expect the proposed rule to result in a significant change in fishing operations to any fishery, or other change that would result in any fishery having significant environmental impacts. These fisheries have not caught their specified ACLs in any year since they were first implemented in 2012, and catches of uku have been less than the proposed ACL every year except one in 2017.

In addition to codifying the ACLs, this proposed rule would make housekeeping changes to the regulations. First, the proposed rule would correct a cross-reference in 50 CFR 665.4(c) that pertains to ACL requirements. The current

regulation references a subsection under National Standard 1 that was changed on October 18, 2016 (81 FR 71858). The proposed rule would update the CFR to refer to the correct subsection on exceptions to ACL requirements (§ 600.310(h)(1)), rather than the subsection on flexibility for endangered species and aquaculture operations (§ 600.310(h)(2)).

The proposed rule would make three housekeeping changes related to management of Hawaii precious corals. The proposed rule would remove subsection (b) in § 665.269, which refers to nonselective harvest of precious coral in conditional beds because nonselective harvest of precious coral is not permitted in any precious coral permit area (see § 665.264). The proposed rule would also remove references in §§ 665.267 and 665.268 to a two-year fishing period for Makapuu Bed and Auau Channel Bed because NMFS now manages these beds on the same one-year fishing year as all other coral beds. The proposed rule would also replace the term "quota" with "ACL" in §§ 665.263, 665.268, and 665.269, to make the language governing catch limits consistent throughout the rule.

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 (83 FR 27716, June 14, 2018), the three Hawaii seamount groundfish (pelagic armorhead, alfonsin, and raftfish) (84 FR 2767, February 8, 2019), and deepwater precious corals at the Westpac Bed Refugia (75 FR 2198, January 14, 2010). 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 around the PRIA within 12 nm of emergent land, unless authorized by the U.S. Fish and Wildlife Service (USFWS) (78 FR 32996, June 3, 2013). 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.

NMFS previously codified 2018-2021 ACLs and AMs for Hawaii Deep 7 bottomfish (84 FR 29394, June 24, 2019).

NMFS will consider public comments on this proposed rule and will announce the final rule 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 rule, 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 rule is consistent with the Hawaii 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 the proposed rule, if

adopted, would not have a significant economic impact on a substantial number of small entities. The proposed action would specify ACLs and AMs for MHI precious corals, deepwater shrimp, and uku fisheries for 2019, 2020, and 2021, and the MHI Kona crab fishery for 2019.

Catch of species or species groups in state, and Federal would all count toward the ACLs under this action. This would include catch by anyone who is required to report catch to state or Federal agencies. As a result this action would apply to hundreds of small entities across Hawaii, although only the vessels participating in the MHI uku and precious coral fisheries are likely to be affected because these are the only fisheries with in-season AMs.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard, 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 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 impacts to individual vessels. Furthermore, the proposed action will not disproportionately affect vessels by gear types, areas fished, or home ports, nor would it substantially affect effort among participants of these fisheries. Except for the MHI uku fishery, the proposed ACLs are the same as those implemented in recent years and recent catch has not been constrained by ACLs. The precious coral fishery is subject to an existing rule that implements an in-season closure for individual coral beds if NFMS projects that the ACL for that bed will be reached before the end of the fishing year. For the uku fishery, the proposed rule would implement a new measure that would close the fishery in

Federal waters if NMFS projects that the ACL will be reached. NMFS and the Council are not considering in-season closures for the Kona crab or deepwater shrimp fisheries because fishery management agencies are not able to track catch in these fisheries relative to the ACLs during the fishing year. Therefore, there is no potential for effects on fishermen from a closure of the Kona crab or deepwater shrimp coral fisheries. 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 to mitigate the overage by reducing the ACL for that fishery in the subsequent year. If an ACL is exceeded more than once in a four-year period, the Council and NMFS would take action to correct the operational issue that caused the ACL overages. 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.

The MHI uku fishery would be subject to a single-species ACL for the first time, as it has historically been subject to an ACL as part of a group of management unit species (MUS) managed as the non-Deep 7 bottomfish. The

other species within the non-Deep 7 MUS were reclassified as ecosystem component species and are no longer subject to an ACL. As this fishery would also be subject to an in-season AM for fishing years 2019 and 2020 that would close the fishery in Federal waters in the event that the catch reaches the ACL, this fishery could potentially be directly affected. Under the proposed alternative, the uku fishery may be constrained by the ACL set at 127,205 lb if catch levels are similar to those in 2017, when fishermen reported catch of 131,841 lb of uku. However that was the only year in which catch would have exceeded an ACL of 127,205 lb out of the last seven years since ACLs were first specified, so NMFS expects that in most years the fishery would not reach the proposed ACL. If the fishery did close, it would likely be near the end of the fishing year, which could result in the fishery earning slightly lower revenue compared with the No Action Alternative. Though catch in 2017 was higher than the proposed ACL in 2017, over the last ten years there has been no three-year period where uku catch reached the proposed ACL. The recent three-year averages are as follows: 105,980 lb average catch for the three years spanning 2014-2016, 117,657 lb for 2015-2017, and 108,544 lb for 2016-2018. Based on recent fishing performance, and with the in-season

accountability measure, the fishery is not likely to be subject to a post-season ACL overage adjustment. Between 2012 and 2017, an average of 297 fishermen reported catch of MHI uku using deep sea handline, inshore handline, and/or trolling with bait. NMFS estimates that up to 300 uku fishermen could potentially be directly affected by this action in any given year.

The precious coral fishery is also subject to an in-season closure under existing regulations. However, since 2013 there has been only one participant in the fishery annually that could be directly affected by this action and catches have not exceed the ACLs. Based on recent fishing performance, and with the in-season accountability measure, the fishery is not likely to be subject to a post-season ACL overage adjustment.

For most of the fisheries subject to this proposed action, fishermen would be able to fish throughout the entire year. The ACLs, as proposed, would not change the gear type, areas fished, effort, or participation of the fisheries during the fishing years under consideration. 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 a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

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

Executive Order 13771

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 50 CFR Part 665

Annual catch limits, Accountability measures,
Bottomfish, Deepwater shrimp, Precious corals, Kona crab,
Uku, Fisheries, Fishing, Hawaii, Pacific Islands.

Dated: February 4, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs

National Marine Fisheries Service

For the reasons set out in the preamble, NMFS proposes
to amend 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 § 665.4, revise paragraph (c) to read as
follows:

§ 665.4 Annual catch limits.

* * * * *

(c) *Exceptions*. The Regional Administrator is not required to specify an annual catch limit for an ECS, or for an MUS that is statutorily excepted from the requirement pursuant to 50 CFR 600.310(h)(1).

* * * * *

3. In § 665.204, revise paragraphs (h) and (i) to read as follows:

§ 665.204 Prohibitions

* * * * *

(h) Fish for or possess any bottomfish MUS as defined in §665.201, in the MHI management subarea after a closure of its respective fishery, in violation of § 665.211.

(i) Sell or offer for sale any bottomfish MUS as defined in § 665.201, after a closure of its respective fishery, in violation of §665.211.

* * * * *

4. Revise § 665.211 to read as follows:

§ 665.211 Annual Catch Limits (ACL).

(a) In accordance with § 665.4, the ACLs for MHI bottomfish fisheries for each fishing year are as follows:

Fishery	2018-19 ACL (1b)	2019-20 ACL (1b)	2020-21 ACL (1b)
Deep 7 bottomfish	492,000	492,000	492,000

Fishery	2019 ACL (1b)	2020 ACL (1b)	2021 ACL (1b)
Uku	127,205	127,205	127,205

(b) When a bottomfish ACL is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the ***Federal Register*** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the ACL is reached.

(c) On and after the date specified in §665.211(b), no person may fish for or possess any bottomfish MUS from a closed fishery in the MHI management subarea, except as otherwise allowed in this section.

(d) On and after the date specified in §665.211(b), no person may sell or offer for sale any bottomfish MUS from a closed fishery, except as otherwise authorized by law.

(e) Fishing for, and the resultant possession or sale of, any bottomfish MUS by vessels legally registered to Mau Zone, Ho'omalulu Zone, or PRIA bottomfish fishing permits and

conducted in compliance with all other laws and regulations, is exempted from this section.

5. Add § 665.253 to read as follows:

§ 665.253 Annual Catch Limits (ACL) .

In accordance with § 665.4, the ACLs for MHI crustaceans for each fishing year are as follows:

Fishery	2019 ACL (1b)	2020 ACL (1b)	2021 ACL (1b)
Kona crab	3,500	NA	NA
Deepwater shrimp	250,733	250,733	250,733

6. In § 665.267, revise paragraph (b) (3) to read as follows:

§ 665.263 Prohibitions.

* * * * *

(b) * * *

(3) In a bed for which the ACL specified in §665.269 has been attained.

* * * * *

7. Revise § 665.267 to read as follows:

§ 665.267 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

8. In § 665.268 revise paragraph (a) to read as follows:

§ 665.268 Closures.

(a) If the Regional Administrator determines that the ACL for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the fishery shall be closed, the reason for the closure, the specific bed being closed, and the effective date of the closure.

* * * * *

9. Revise § 665.269 to read as follows:

§ 665.269 Annual Catch Limits (ACL).

(a) *General.* The ACLs limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed paragraph (c) of this section. Only live coral is counted toward the ACL. The accounting period for each fishing year for all precious coral ACLs begins July 1 and ends June 30 of the following year.

(b) *Reserves and reserve release.* The ACL for exploratory area X-P-H will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Hawaii exploratory areas will equal the ACL minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of Hawaii precious coral for each exploratory area equal to the ACL minus two times the amount harvested by vessels of the United States in that July 1-December 31 period.

(4) NMFS will publish in the Federal Register a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(c) In accordance with § 665.4, the ACLs for MHI precious coral permit areas for each fishing year are as follows:

Table 1 to paragraph (c)

Type of coral bed	Area and coral group	2019 ACL (lb)	2020 ACL (lb)	2021 ACL (lb)
Established bed	Auau Channel - Black coral	5,512	5,512	5,512
	Makapuu Bed - Pink and red coral	2,205	2,205	2,205
	Makapuu Bed - Bamboo coral	551	551	551

Type of coral bed	Area and coral group	2019 ACL (lb)	2020 ACL (lb)	2021 ACL (lb)
Conditional Beds	180 Fathom Bank - Pink and red coral	489	489	489
	180 Fathom Bank - Bamboo coral	123	123	123
	Brooks Bank - Pink and red coral	979	979	979
	Brooks Bank - Bamboo coral	245	245	245
	Kaena Point Bed - Pink and red coral	148	148	148
	Kaena Point Bed - Bamboo coral	37	37	37
	Keahole Bed - Pink and red coral	148	148	148
	Keahole Bed - Bamboo coral	37	37	37
Exploratory Area	Hawaii - precious coral	2,205	2,205	2,205

Note 1 to § 665.269: No fishing for coral is authorized in refugia.

Note 2 to § 665.269: A moratorium on gold coral harvesting is in effect through June 30, 2023.

[FR Doc. 2020-02536 Filed: 2/7/2020 8:45 am; Publication Date: 2/10/2020]