



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 210211-0020]

RIN 0648-BJ82

Pacific Island Fisheries; Mariana Archipelago Bottomfish

Annual Catch Limits and Accountability Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rulemaking proposes to establish annual catch limits (ACL) and annual catch targets (ACT) for bottomfish in Guam and the Commonwealth of the Northern Mariana Islands (CNMI), and accountability measures (AM) to correct or mitigate any overages by reducing the ACL and or ACT for the subsequent year. The proposed ACLs, ACTs, and AMs would be effective for fishing years 2020-2022 in Guam and for fishing years 2020-2023 in the CNMI. The proposed action supports the long-term sustainability of the bottomfish fishery in the Mariana Islands.

DATES: NMFS must receive comments by [*insert date 21 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0119, 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-2020-0119>, 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 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 a draft environmental assessment (EA) that describes the potential impacts on the human environment that could result from the proposed ACLs and

AMs. The draft EA and other supporting documents are available from *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, NMFS Pacific Islands Regional Office, Sustainable Fisheries, 808-725-5173.

SUPPLEMENTARY INFORMATION: The Guam and CNMI bottomfish fisheries target an assemblage, or complex, of 13 bottomfish management unit species (BMUS), including emperors, snappers, groupers, and jacks. NMFS and the Western Pacific Fishery Management Council (Council) manage the bottomfish fisheries in the U.S. Exclusive Economic Zone (generally 3-200 nautical miles (nm) from shore) around Guam and the CNMI through the Fishery Ecosystem Plan for the Mariana Archipelago (FEP), 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, ACTs, and AMs, codified at 50 CFR 665.4.

The regulations require NMFS to specify an ACL and AM for each stock and stock complex of management unit species, 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 specification of an ACT, which is set below the ACL, can help ensure that the catch does not exceed the ACL. When used, an ACT also serves as the basis for invoking accountability measures.

The Council and NMFS manage bottomfish as a single multi-species stock complex that is assessed as one unit whether the fish are in territorial or Federal waters. As a result, while most fishing for BMUS occurs in territorial waters, generally from the shoreline out to 3 nm, catches from both territorial waters and Federal waters around the territories would be counted towards the specified ACT and ACL that applies only to Federal waters.

The Council recommended that NMFS specify ACLs for BMUS in Guam at 27,000 lb (12,247 kg) for each fishing year 2020-2022 and in the CNMI at 84,000 lb (38,102 kg) for each fishing year 2020-2023. The 2020 fishing year ended December 31, 2020. The Council also recommended an ACT of 78,000 lb (35,380 kg) for CNMI BMUS for the same period. The fishing year for bottomfish in the Mariana Islands is the calendar year. The Council based its recommendations on a 2019 benchmark stock assessment by the NMFS Pacific Islands Fisheries Science Center (PIFSC), and in consideration of the best available scientific, commercial, and other information about the fishery, and in accordance with the ACL process set forth in the FEP.

NMFS proposes to implement the Council's recommended AM to Guam and CNMI BMUS, which is to apply a three-year average catch to evaluate fishery performance against the ACLs and in the event of overage to adjust the ACL and or ACT for the subsequent year. Specifically, under the proposed AMs, NMFS and the Council would use the average catch of the past three fishing years to evaluate fishery performance against the ACL for a particular fishery. At the end of each fishing year, if NMFS and the Council determine that the average catch of the past three years for any fishery exceeds the specified ACL, NMFS would, by separate rulemaking, reduce the ACL in the subsequent year for that fishery by the amount of the overage. NMFS may also specify an ACT that is below the ACL, as recommended by the Council. When used, the ACT serves as the basis for invoking the AM. For CNMI, the ACT would also be subject to the same adjustment as the ACL for the subsequent fishing year. If the average catch from the most recent three-year period exceeds the ACT but remains below the ACL, then an overage adjustment would not be applied.

The 2019 stock assessment concluded that, in 2017, the Guam BMUS stock was overfished, but not subject to overfishing. NMFS adopted the findings of the assessment and notified the Council in February 2020. The Magnuson-Stevens Act requires the Council to prepare and implement an FEP, FEP amendment, or proposed regulations to rebuild

the stock within two years of that notification (that is, by February 2022). Thus, the proposed Guam ACL will cover the period of 2021 through 2022, during which time the Council will develop the necessary action to rebuild the stock.

The 2019 stock assessment estimated the overfishing limit for Guam BMUS to be 36,000 lb (16,329 kg). The proposed Guam ACL corresponds to a 31 percent probability of overfishing, which is more conservative than the 50 percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson-Stevens Act (NS1). It is likely that annual catch in 2020 through 2022 would not only approach the proposed ACL, but the three-year average of catch would exceed the proposed ACL. If the catch exceeds the three-year average, then the proposed post-season adjustment would be implemented to reduce the ACL in the subsequent year. The proposed ACLs and AMs are meant to prevent overfishing in accordance with NS1. ACLs designed to rebuild Guam bottomfish will be part of a subsequent Council rebuilding plan.

The 2019 stock assessment also concluded that in 2017 the CNMI BMUS stock was not overfished and did not experience overfishing. The assessment estimated the overfishing limit for CNMI BMUS to be 98,000 lb (44,452 kg). The CNMI ACL and ACT correspond to 39 percent and 34 percent probability of overfishing, respectively, which are

more conservative than the 50 percent risk threshold allowed under NMFS guidelines for NS1 of the Magnuson-Stevens Act. NMFS does not anticipate that the CNMI fishery will reach the proposed ACT or ACL in any fishing year, nor will fishing for bottomfish be constrained during the fishing year.

NMFS will consider public comments on this proposed rule and will announce the final ACLs, ACTs, and AMs in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. Regardless of the final ACLs, ACTs and AMs, 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 has determined that this proposed action 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 rule, 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 rule.

The proposed rule would implement ACLs, ACTs, and AMS for the bottomfish in Guam and the CNMI. These measures would apply in 2020-2022 for Guam and in 2020-2023 for the CNMI. The Council recommended the proposed measures based on the most recent stock assessment for bottomfish in Guam and the CNMI, consistent with the Magnuson-Stevens Act and in accordance with the ACL process set forth in the FEP.

For the CNMI, NMFS proposes an ACL of 84,000 lb (38,102 kg), which is associated with a 39 percent risk of overfishing, which is more conservative than the 50 percent threshold allowed by the NS1 guidelines. The proposed ACL is a 63 percent reduction from the 228,000 lb (103,419 kg) ACL set in 2016 and 2017. This reduction is based on the most recent stock assessment, which incorporated several changes that resulted in markedly different outputs compared to the previous assessment that informed the 2016 and 2017 ACL. As described in the 2019 stock assessment and discussed at the October 2019 Council meeting, these changes included using a new species list, filtering data in a new way, and standardizing data for covariates that may affect the catch rate. NMFS did not specify ACLs for

2018 and 2019 while the Council and NMFS completed Amendment 5 to the FEP, which reclassified certain management unit species as ecosystem component species. Taking into account social, economic, and ecological considerations and management uncertainty, NMFS proposes to set an ACT at 78,000 lb (35,380 kg), which is associated with a 34 percent risk of overfishing.

For Guam, NMFS proposes an ACL of 27,000 lb (12,247 kg), which is associated with a 31 percent risk of overfishing and is a 59 percent reduction from the 66,000 lb (29,937 kg) ACL set in 2016 and 2017. Like in the CNMI, this reduction is based on the most recent stock assessment, which incorporated several changes that resulted in markedly different outputs compared to the previous assessment. Additionally, according to the recent stock assessment, the stock is overfished, but not subject to overfishing. The previous assessment indicated the stock was fished at sustainable levels. NMFS adopted the findings of the assessment and so notified the Council in February 2020. ACLs designed to rebuild will be part of the Council's rebuilding plan.

The fishing year for bottomfish in Guam and the CNMI begins January 1 and ends December 31. NMFS would count bottomfish catches from both territorial waters and the Exclusive Economic Zone toward the ACL and ACT. Because real-time catch data are not currently available for this

fishery, the Council and NMFS consider post-season AMs only. Specifically, for Guam, if NMFS and the Council determine that the average catch from the most recent three-year period exceeds the ACL, NMFS would reduce the ACL in the subsequent fishing years by the amount of the overage. For the CNMI, if NMFS and the Council determine that the average catch from the most recent three-year period exceeds the ACL, NMFS would reduce the ACL and ACT in the subsequent fishing year by the amount of the overage. If the average catch from the most recent three-year period exceeds the ACT, but is below the ACL, NMFS would not apply a post-season AM.

The bottomfish fisheries in Guam and the CNMI share many similarities in terms of gear, fishing methods, and species targeted. Many people who participate in the bottomfish fishery are either subsistence or part-time commercial fishermen, and they generally do not sell all of their catch. The majority of fishermen operate vessels less than 25 ft long, but a few longer vessels also participate in the fishery. Commercial vessels tend to concentrate effort on deepwater bottomfish at offshore banks, but they face higher operating costs than the shallow-water fishery operating closer to shore. In addition to sales to seafood dealers, some bottomfish sales are within community social networks.

In Guam, the number of vessels landing BMUS increased from 29 vessels in 2012 to 52 vessels in 2019. Annual BMUS catch is variable, but has been trending upwards over the past eight years, ranging from a low of 10,882 lb (4,936 kg) in 2015 to a high of 37,701 lb (17,101 kg) in 2019. The annual catch for three out of the last eight years has exceeded the proposed ACL, and the average annual catch from 2017 to 2019 was 26,906 lb (12,204 kg), which is 99.6 percent of the proposed ACL. Data on the amount sold and revenue in 2019 are not available due to confidentiality requirements. Applying the 2018 percent sold (11 percent) and price per pound (\$5.05) to the 2019 estimated catch, yields a projection that 4,147 lb (1,881 kg) was sold in 2019 with an estimated revenue of \$20,942.

In the CNMI, the number of vessels landing BMUS has fluctuated from a high of 51 vessels in 2005 to a low of two vessels in 2018. In 2019, eight vessels landed BMUS. The average annual catch of BMUS from 2017 to 2019 was 23,223 lb (10,534 kg). In 2019, the fishery landed 21,012 lb (9,531 kg), which is 27 percent of the ACL and 30 percent of the ACT, respectively, so the fishery is unlikely to reach the ACL or ACT in future years. We estimate that the 2019 revenue for this fishery was \$35,840.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary

industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing 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 its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels engaging in the Guam and CNMI commercial and non-commercial bottomfish fisheries (NAICS Code: 114111) are small entities. That is, they are engaged in the business of finfish harvesting, independently owned or operated, not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, NMFS has determined that 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 is not expected to result in significant adverse economic impact to individual vessels. While the fisheries could reach or exceed the ACL or ACT, the catch data are not available until six months after the local resource agencies have collected the data. Therefore, the proposed rule would not

subject the fisheries to an in-season AM, such as a fishery closure and, without an in-season AM, fishing activity is not likely to be constrained.

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

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits, Bottomfish, Fisheries, Fishing, Guam, Mariana Archipelago, Northern Mariana Islands, Pacific Islands.

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

Dated: February 12, 2021.

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. Add § 665.408 to read as follows:

§ 665.408 Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

(a) In accordance with § 665.4, the ACL and ACT for Guam and CNMI bottomfish MUS fisheries for each fishing year are as follows:

Table 1 to paragraph (a)

		2020	2021	2022
Guam	ACL (1b)	27,000	27,000	27,000

Table 2 to paragraph (a)

		2020	2021	2022	2023
CNMI	ACL (1b)	84,000	84,000	84,000	84,000
	ACT (1b)	78,000	78,000	78,000	78,000

(b) If the average catch of the three most recent years exceeds the specified ACL or ACT in a fishing year, the Regional Administrator will reduce the ACL and or ACT for the subsequent year by the amount of the overage in a separate rulemaking.

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