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(b) The operator of a fishing vessel that has taken bottomfish in the Ho'omalau Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

§ 665.64 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for bottomfish and seamount groundfish with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.61 or otherwise established to be fishing for bottomfish or seamount groundfish in the management sub-areas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish and seamount groundfish is prohibited.

§ 665.65 At-sea observer coverage.

(a) All fishing vessels subject to this subpart must carry an observer when directed to do so by the Regional Administrator.

(b) The PIRO will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress of futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other gallery privileges must be the same for the observer as for other crew members.

(d) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other tem-

porary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Administrator prior to the vessel's departure from port.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

§ 665.66 Protected species conservation.

The Regional Administrator may change the size of the protected species study zones defined in § 665.12 of this subpart:

(a) If the Regional Administrator determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.

(b) After consulting with the Council.

(c) Through notification in the FEDERAL REGISTER published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 665.67 Framework for regulatory adjustments.

(a) *Annual reports.* By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(1) Fishery performance data.

(2) Summary of recent research and survey results.

(3) Habitat conditions and recent alterations.

(4) Enforcement activities and problems.

(5) Administrative actions (e.g., data collection and reporting, permits).

(6) State and territorial management actions.

(7) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation

may be signaled by the following indicator criteria:

- (i) Mean size of the catch of any species in any area is a pre-reproductive size.
- (ii) Ratio of fishing mortality to natural mortality for any species.
- (iii) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.
- (iv) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.
- (v) Substantial decline in ex-vessel revenue relative to baseline levels.
- (vi) Significant shift in the relative proportions of gear in any one area.
- (vii) Significant change in the frozen/fresh components of the bottomfish catch.
- (viii) Entry/exit of fishermen in any area.
- (ix) Per-trip costs for bottomfishing exceed per-trip revenues for a significant percentage of trips.
- (x) Significant decline or increase in total bottomfish landings in any area.
- (xi) Change in species composition of the bottomfish catch in any area.
- (xii) Research results.
- (xiii) Habitat degradation or environmental problems.
- (xiv) Reported interactions between bottomfishing operations and protected species in the NWHI.

(8) Recommendations for Council action.

(9) Estimated impacts of recommended action.

(b) *Recommendation of management action.* (1) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, state/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(2) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: Catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(3) The Council may recommend management action by either the state/territorial governments or by Federal regulation.

(c) *Federal management action.* (1) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Administrator after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(2) The Regional Administrator will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(3) The Council may appeal denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(4) The Regional Administrator and the Assistant Administrator will make their decisions in accord with the Magnuson Act, other applicable law, and the Bottomfish FMP.

(5) To minimize conflicts between the Federal and state management systems, the Council will use the procedures in paragraph (b) of this section to respond to state/territorial management actions. Council consideration of action would normally begin with a representative of the state or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(d) *Access limitation procedures.* (1) Access limitation may be adopted under this paragraph (d) only for the NWHI, American Samoa, and Guam.

(2) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (d), the following requirements must be met:

(i) The Bottomfish Monitoring Team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics

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of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(ii) Public hearings must be held specifically addressing the limited access proposals.

(iii) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Administrator on administrative decisions.

(iv) The Council's recommendation to the Regional Administrator must be approved by a two-thirds majority of the voting members.

(e) *Five-year review.* The Council will conduct a comprehensive review on the effectiveness of the Mau Zone limited access program 5 years following implementation of the program. The Council will consider the extent to which the FMP objectives have been met and verify that the target number of vessels established for the fishery is appropriate for current fishing activity levels, catch rates, and biological condition of the stocks. The Council may establish a new target number based on the 5-year review.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22814, Apr. 28, 1999]

§ 665.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 2010.

[69 FR 51401, Aug. 19, 2004]

§ 665.69 Management subareas.

(a) The bottomfish fishery management area is divided into eight subareas with the following designations and boundaries:

(1) Main Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161°20' W. long.

(2) Northwestern Hawaiian Islands (NWHI) means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161°20' W. long. However, for the purposes of regulations issued under this subpart, Midway Island is treated as part of the Northwestern Hawaiian Islands Subarea.

(i) Ho'omalulu Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161°20' W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00' W. long. and north of 28°00' N. lat.

(4) Guam means the EEZ seaward of the Territory of Guam.

(5) American Samoa means the EEZ seaward of the Territory of American Samoa.

(6) CNMI Inshore Area means that portion of the EEZ shoreward of 3 nautical miles of the shoreline of the CNMI.

(7) CNMI Offshore Area means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(8) Pacific Remote Island Areas means that portion of the EEZ seaward of the Pacific Remote Island Areas, with the exception of Midway Atoll.

(b) The inner boundary of each fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, the Territory of Guam, the CNMI, and the PRIA.

(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 which are equidistant between Guam and the island of Rota in the CNMI.

[61 FR 34572, July 2, 1996. Redesignated at 71 FR 17989, Apr. 10, 2006, as amended by 71 FR 53607, Sept. 12, 2006]

§ 665.70 Bottomfish fishery area management.

(a) *Large vessel bottomfish prohibited area.* A large vessel of the United States may not be used to fish for bottomfish management unit species in any large vessel bottomfish prohibited area as defined in paragraph (b) of this section.