

SCWA may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SCWA must apply for and obtain a modification of the LOA as described in § 217.8.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.8 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.7 for the activity identified in § 217.1(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.7 for the activity identified in § 217.1(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SCWA regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from SCWA's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.7, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 217.9 [Reserved]

§ 217.10 [Reserved]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648-BK79

Pacific Island Fisheries; Amendment 5 to the Fishery Ecosystem Plan for the American Samoa Archipelago; American Samoa Bottomfish Fishery Rebuilding Plan

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

ACTION: Announcement of availability of fishery ecosystem plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the Fishery Ecosystem Plan for the American Samoa Archipelago (FEP). If approved, Amendment 5 would establish a rebuilding plan for the American Samoa bottomfish stock complex. The Council recommended Amendment 5 to rebuild the bottomfish stock, which is overfished and experiencing overfishing.

DATES: NMFS must receive comments on Amendment 5 by March 22, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0006, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0006, in the Search box. Click on the "Comment" 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 NMFS will generally post them 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).

Amendment 5 includes a draft environmental assessment (EA) and regulatory impact review (RIR) that analyzes the potential impacts of the proposed action and alternatives considered. Copies of Amendment 5, including the EA and RIR, and other supporting documents, are available at <https://www.regulations.gov> or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Heather Cronin, Sustainable Fisheries, NMFS PIR, 808-725-5179.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the American Samoa bottomfish fishery under the FEP and implementing regulations. The Council and NMFS only have the authority to develop and implement fishery management regulations in Federal waters, and the American Samoa Government has the authority to implement fishery management measures in territorial waters. The fishery primarily targets and harvests 11 species of emperors, snappers, groupers, and jacks. Bottomfish are typically harvested in deep waters, though some species are caught over reefs at shallower depths. Fishing for bottomfish primarily occurs within 20 miles from shore using aluminum catamarans less than 32 feet (9.7 m) long, known locally as alia. There are fewer than 20 participants in the fishery. Bottomfish fishermen in American Samoa are not required to obtain a Federal permit to fish for bottomfish management unit species (BMUS) or report their BMUS catch to NMFS. American Samoa has a mandatory requirement for entities that sell any seafood products (*e.g.*, fish dealers, hotels, and restaurants) to submit invoice reports to American Samoa Division of Marine and Wildlife Resources. There are no territorial permitting requirements to fish for bottomfish in territorial waters.

Currently, the fishery is relatively small and primarily non-commercial, but it is still of importance to the local economy, and from social, cultural, and food security standpoints. In the past 20 years, the estimated total catch has varied from a high of 42,301 lb (19,187 kg) in 2001 to a low of 7,688 lb (3,487 kg) in 2012. The average catch from 2018–2020 was 12,687 lb (5,755 kg), with 965 lb (438 kg) attributed to the

commercial fishery and the 11,722 lb (5,317 kg) attributed to the non-commercial sector. In 2020, the commercial price was \$3.48/lb (\$7.67/kg) and the estimated fishery revenue was \$4,018.

On February 10, 2020, NMFS notified the Council that the bottomfish stock complex was overfished and subject to overfishing (85 FR 26940, May 6, 2020). Consistent with section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.310(j), the Council must prepare, and NMFS must implement a rebuilding plan within two years of the notification. If approved, Amendment 5 would implement a rebuilding plan for the American Samoa bottomfish stock complex that consists of an annual catch limit (ACL) and two accountability measures (AM). We would set the ACL to 5,000 lb (2,268 kg) starting in 2022. Because NMFS is obligated to manage the stock throughout its range, and the complex exists in both territorial and Federal waters, we would count harvests from territorial and Federal waters toward the ACL. Note, however, that existing data collection programs do not differentiate catch from territorial versus Federal waters. The fishing year is the calendar year.

As an in-season AM, if NMFS projects that the fishery will reach the ACL in any year, then we would close the fishery in Federal waters for the remainder of that year. At this time, the American Samoan Government does not have regulations in place to implement a complementary closure in territorial waters at the same time as a Federal closure. Therefore, NMFS expects there could continue to be fishing in territorial waters even after a closure of

the bottomfish fishery in Federal waters, and this could offset the potential conservation benefits of restricting bottomfish harvest in Federal waters. As an additional AM, if the total annual catch (which includes catch from both Federal and territorial waters) exceeds the ACL during a year, we would close the fishery in Federal waters until NMFS and the Territory of American Samoa implement a coordinated management regime to ensure that the catch in both Federal and territorial waters is maintained at levels that allow the stock to rebuild. The rebuilding plan would remain in place until NMFS determines that the stock complex is rebuilt, which is expected to take 10 years if catches are maintained at the specified level. NMFS and the Council would review the rebuilding plan every two years and amend it, as necessary.

NMFS must receive comments on Amendment 5 by March 22, 2022 for consideration in the decision to approve, partially approve, or disapprove the amendment. Concurrent with our review of the amendment under the Magnuson-Stevens Act procedures, NMFS expects to publish in the **Federal Register** and request public comment on a proposed rule that would implement the draft measures described in Amendment 5. NMFS specifically invites public comments that address the impact of Amendment 5 and the proposed rule on cultural fishing in American Samoa.

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

Dated: January 18, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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