

FMP for the Pelagic Fisheries of the Western Pacific Region (Amendment 8); and Amendment 10 to the FMP for the Crustacean Fisheries of the Western Pacific Region (Amendment 10). The supplemental amendments make the four FMPs consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act of 1996 (SFA).

**DATES:** This agency decision is effective July 3, 2003.

**ADDRESSES:** Copies of the supplemental FMP amendments, including the Environmental Assessment may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Paul Dalzell, Western Pacific Fishery Management Council, at 808-522-8220.

**SUPPLEMENTARY INFORMATION:** On July 3, 2003, NMFS approved supplemental amendments to FMP Amendment 4, Amendment 6, Amendment 8, and Amendment 10 to address portions of previously submitted amendments that were disapproved by NMFS in 1999 because of inconsistency with the Magnuson-Stevens Act, as amended by the SFA. Generally, the amendments pertain to overfishing definitions and control rules for the bottomfish and seamount groundfish, pelagics, and crustacean FMPs; bycatch provisions for fisheries operating under the bottomfish and seamount groundfish and pelagic FMPs; and definitions for "fishing communities" in Hawaii under the bottomfish and seamount groundfish, pelagics, crustaceans, and precious corals FMPs. The supplemental FMP amendments do not revise the existing management regime; therefore, rulemaking is not required. Additional background information may be found in the preamble to the Notice of Availability for the supplemental FMP amendments (68 FR 16754, April 7, 2003) and is not presented here.

### Comments and Responses

*Comment 1:* NMFS received comments urging the Secretary of Commerce to enforce the conservation measures in the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve).

*Response:* The supplemental FMP amendments do not contain management measures that affect management of the Reserve. The specification of status determination criteria for overfishing established for

the four FMPs governing the fisheries in the western Pacific region, including American Samoa, Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands, do not have an impact on Executive Order 13178 and Executive Order 13196, which created the Reserve. These criteria, which are consistent with NMFS' national guidelines, do not in themselves require that fishing take place or that it takes place at any particular level. NMFS recognizes that the Executive Orders are currently in effect, including Reserve Preservation Areas and certain other conservation measures that either completely prohibit fishing or allow fishing in accordance with restrictions that are applicable in the Reserve.

*Comment 2:* One commenter stated that the supplemental amendments provided incorrect information about the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, specifically that they quoted Section 7(a)(1)(C) of Executive Order 13178 while failing to note that section had been revised by Executive Order 13196, giving it a different meaning.

*Response:* NMFS concurs that the supplemental FMP amendments could provide a better description of the Executive Orders. Clarification is provided here. Consistent with Executive Order 13196, Section 7(a)(1)(C) of Executive Order 13178 specifies that:

"(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing as follows:

(1) Bottomfishing the annual aggregate level for each permitted bottomfisher shall be that permittee's individual average taken over the 5 years preceding December 4, 2000, as determined by the Secretary, provided that the Secretary, in furtherance of the principles of the reserve, may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(2) All other commercial fishing the annual aggregate level shall be the permittee's individual take in the year preceding December 4, 2000, as determined by the Secretary.

*Comment 3:* One commenter stated that the overfishing criteria specified in the crustaceans FMP are not consistent with the Executive Orders establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, specifically Section 7 (a)(1)(C) of Executive Order 13178. The commenter believes that the proper interpretation of that section is that lobster fishing is prohibited within the Reserve, and

recommends that the discussion of overfishing and control rules for the commercial lobster fishery be removed from the supplemental amendments unless it is clear that they pertain only to areas outside the Reserve.

*Response:* The preferred alternative of status determination criteria in the supplemental FMP amendments do not introduce any inconsistencies or conflicts with the Executive Orders that established the Reserve. These criteria do not in themselves mandate that commercial lobster fishing take place or that it takes place at any particular level. They only describe how overfishing would be defined, as expressed in terms of the two thresholds: the minimum stock size threshold and the maximum fishing mortality threshold. These definitions are consistent with NMFS' national guidelines

*Comment 4:* One commenter stated that the environmental assessments for the three supplemental FMP amendments did not consider a wide enough range of alternatives with respect to the overfishing criteria (including alternative proxies that could be used in those criteria) and the target and rebuilding control rules and associated reference points.

*Response:* The preferred alternative (control rules and thresholds) in the supplemental FMP amendments is scientifically sound and consistent with the applicable guidelines. NMFS scientists assisted the Council in developing status determination criteria (overfishing definitions), guided by the "Technical Guidance on the Use of Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act." (NOAA Technical Memo NMFS-F/SPO-31, August 1998). NMFS recognizes that relatively few alternatives were considered, but finds that the range was adequate given the number of reasonable alternatives that were available. That number is relatively small because of the limited data that are available for the stocks. For example, in the case of the Bottomfish and Seamount Groundfish FMP, for which the commenter was specifically concerned about the failure to consider alternative proxies other than catch-per-unit-effort (CPUE), the data-poor nature of the stocks in much of the region means that very few proxies for biomass other than CPUE would be practical.

*Comment 5:* One commenter stated that a programmatic environmental impact statement on the associated fisheries should be prepared in order to ensure that, in the face of existing uncertainties, the fishery management