

Fishery Conservation and Management

§ 665.201

~~(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.~~

§ 665.167 Quotas.

~~(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.167(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.~~

~~(b) Conditional bed closure. A conditional bed will be closed to all non-selective coral harvesting after the quota for one species of coral has been taken.~~

~~(c) Reserves and reserve release. The quotas for exploratory area X-P-AS 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 American Samoa exploratory area will equal the quota 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 precious coral for each exploratory area equal to the quota 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.~~

~~(d) The American Samoa exploratory permit area X-P-AS has an annual quota of 1,000 kg for all American Samoa precious coral MUS combined with the exception of black corals.~~

§ 665.168 Seasons.

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

§ 665.169 Gold coral harvest moratorium.

~~Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.~~

~~[78 FR 32182, May 29, 2013]~~

Subpart C—Hawaii Fisheries

§ 665.198 Management area.

The Hawaii fishery management area is the EEZ seaward of the State of Hawaii, including the Main Hawaiian Islands (MHI) and Northwestern Hawaiian Islands (NWHI), with the inner boundary a line coterminous with the seaward boundaries of the State of Hawaii and the outer boundary 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.

§ 665.199 Area restrictions [Reserved]

§ 665.200 Hawaii bottomfish and sea-mount groundfish fisheries. [Reserved]

§ 665.201 Definitions.

As used in §§ 665.200 through 665.219:
Hawaii bottomfish management unit species (Hawaii bottomfish MUS) means the following species:

Local name	English common name	Scientific name
Lehi	silver jaw jobfish	<i>Aphareus rutilans</i> .
Uku white papio, ulua au	gray jobfish	<i>Aprion virescens</i> .
kea	giant trevally	<i>Caranx ignobilis</i> .
ulua la'uli	black jack	<i>Caranx lugubris</i> .
hpu'upu'u	sea bass	<i>Epinephalus quernus</i> .
Ehuonaga, 'ula'ula	red snapper	<i>Etelis carbunculus</i> .
koa'e	longtail snapper	<i>Etelis coruscans</i> .
ta'ape	blue stripe snapper	<i>Lutjanus kasmira</i> .
kalekale	yellowtail snapper	<i>Pristipomoides auricilla</i> .
'papakapa	pink snapper	<i>Pristipomoides filamentosus</i> .
kalekale	pink snapper	<i>Pristipomoides seiboldii</i> .
gindai	snapper	<i>Pristipomoides zonatus</i> .
pig ulua, butaguchi	thicklip trevally	<i>Pseudocaranx dentex</i> .

Local name	English common name	Scientific name
kahala	amberjack	<i>Seriola dumeril</i> .

Hawaii restricted bottomfish species fishing year means the year beginning at 0001 HST on September 1 and ending at 2400 HST on August 31 of the next calendar year.

Main Hawaiian Islands non-commercial bottomfish permit means the permit required by § 665.203(a)(2) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any Hawaii bottomfish MUS in the MHI Management Subarea.

Protected species study zone means the waters within 50 nm, as designated by the Regional Administrator pursuant to § 665.208, around the following islands of the NWHI and as measured from the following coordinates:

Name	N. lat.	W. long.
Nihoa Island	23°05'	161°55'
Necker Island	23°35'	164°40'
French Frigate Shoals	23°45'	166°15'
Gardner Pinnacles	25°00'	168°00'
Maro Reef	25°25'	170°35'
Laysan Island	25°45'	171°45'
Lisianski Island	26°00'	173°55'
Pearl and Hermes Reef	27°50'	175°50'
Midway Island	28°14'	177°22'
Kure Island	28°25'	178°20'

Seamount Groundfish means the following species:

Common name	Scientific name
Armorhead	<i>Pseudopentaceros wheeleri</i> .
Alfonsin	<i>Beryx splendens</i> .
Rattfish	<i>Hyperoglyphe japonica</i> .

§ 665.202 Management subareas.

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

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

(2) Northwestern Hawaiian Islands means the EEZ around the Hawaiian Archipelago lying to the west of 161°20' W. long. For the purposes of regulations issued under this subpart, Midway Island is treated as part of the NWHI 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 Seamounts Ecosystem Management Area means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180° W. long. and north of 28° N. lat.

(b) The inner boundary of each management subarea is a line coterminous with the seaward boundaries of the State of Hawaii.

(c) The outer boundary of each management subarea 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.

[75 FR 2205, Jan. 14, 2010, as amended at 75 FR 69015, Nov. 10, 2010]

§ 665.203 Permits.

(a) *Applicability*—(1) *Northwestern Hawaiian Islands*. The owner of any vessel used to fish for, land, or transship Hawaii bottomfish MUS shoreward of the outer boundary of the NWHI subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. PIRO will not register a single vessel for use with a Ho'omalulu Zone permit and a Mau Zone permit at the same time. Mau Zone permits issued before June 14, 1999, became invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (b)(3) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalulu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(2) *MHI non-commercial*. The owner of a vessel that is used for and any person who participates in non-commercial,

vessel-based fishing, landing, or transshipment of Hawaii bottomfish MUS in the MHI management subarea is required to obtain an MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License. If one or more persons on a vessel-based bottomfish fishing trip holds an MHI non-commercial permit, then the entire trip is considered non-commercial, and not commercial. However, if any commercial fishing occurs during or as a result of a vessel-based fishing trip, then the fishing trip is considered commercial, and not non-commercial. Charter boat customers are not subject to the requirements of the section.

(b) *Submission.* (1) An application for a permit required under this section must be submitted to PIRO as described in §665.13.

(2) Ho'omalulu Zone limited access permit. In addition to an application under §665.13(c), each applicant for a Ho'omalulu Zone permit must also submit a supplementary information sheet provided by PIRO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) A copy of landings receipts or other documentation, with a certification from a state or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentages of ownership of the partnership or corporation.

(3) Mau Zone limited access permit. PIRO will not accept applications for a new Mau Zone permit after June 14, 1999. In addition to an application under §665.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by PIRO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) Copy of State of Hawaii catch report(s) to demonstrate that the permitted vessel had made qualifying landings of bottomfish from the Mau Zone; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentage of ownership of the partnership or corporation.

(c) Sale or transfer of Ho'omalulu limited access permits to new vessel owners.

(1) A Ho'omalulu zone permit may not be sold or otherwise transferred to a new owner.

(2) A Ho'omalulu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Administrator.

(d) Transfer of Ho'omalulu Zone limited access permits to replacement vessels.

(1) Upon application by the owner of a permitted vessel, the Regional Administrator will transfer that owner's permit to a replacement vessel owned by that owner, provided that the replacement vessel does not exceed 60 ft (18.3 m) LOA. The replacement vessel must be put into service no later than 12 months after the owner applies for the transfer, or the transfer shall be void.

(2) An owner of a permitted vessel may apply to the Regional Administrator for transfer of that owner's permit to a replacement vessel greater than 60 ft (18.3 m) LOA. The Regional Administrator may transfer the permit upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, or has catching power that does not exceed that of the original vessel, and that the transfer is not inconsistent with the objectives of the program. The Regional Administrator shall consider vessel length, range, hold capacity, gear limitations, and

other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) Ho'omalū Zone limited access permit renewal.

(1) A qualifying landing for Ho'omalū Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS from the Ho'omalū Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho'omalū Zone, of which at least 50 percent by weight was Hawaii bottomfish MUS. A permit is eligible for renewal for the next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Administrator for a waiver of the landing requirement. If the Regional Administrator finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Administrator may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) Issuance of new Ho'omalū Zone limited access permits. The Regional Administrator may issue new Ho'omalū Zone limited access permits under § 665.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho'omalū Zone are able to support additional fishing effort.

(g) Eligibility for new Ho'omalū Zone limited access permits. When the Regional Administrator has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) *Point system.* (i) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more of any of the following types of landings in the NWHI:

(A) Any amount of Hawaii bottomfish MUS, regardless of weight, if made on or before August 7, 1985;

(B) At least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS, if made after August 7, 1985; or

(C) At least 2,500 lb (1,134 kg) of any fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the MHI.

(iii) For any one year, points will be assigned under either paragraph (g)(1)(i) or (g)(1)(ii) of this section, but not under both paragraphs.

(iv) Before the Regional Administrator issues a Ho'omalū zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) *Restrictions.* An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) *Order of issuance.* New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Administrator through a lottery.

(4) *Notification.* The Regional Administrator shall place a notice in the FEDERAL REGISTER and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) Eligibility for new Mau Zone limited access permits.

(1) PIRO will issue an initial Mau Zone permit to a vessel owner who qualifies for at least three points under the following point system:

(i) An owner who held a Mau Zone permit on or before December 17, 1991, and whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS on or before December 17, 1991, shall be assigned 1.5 points.

(ii) An owner whose permitted vessel made at least one qualifying landing of

Hawaii bottomfish MUS during 1991 shall be assigned 0.5 point.

(iii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1992 shall be assigned 1.0 point.

(iv) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1993 shall be assigned 1.5 points.

(v) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1994 shall be assigned 2.0 points.

(vi) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1995 shall be assigned 2.5 points.

(vii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1996 shall be assigned 3.0 points.

(viii) Before PIRO issues a Mau Zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) For purposes of this paragraph (h), a "qualifying landing" means any amount of Hawaii bottomfish MUS lawfully harvested from the Mau Zone and offloaded for sale. No points shall be assigned to an owner for any qualifying landings reported to the State of Hawaii more than 1 year after the landing.

(3) More than one Mau Zone permit may be issued to an owner of two or more vessels, provided each of the owner's vessels for which a permit will be registered for use has made the required qualifying landings for the owner to be assigned at least three eligibility points.

(4) A Mau Zone permit holder who does not own a vessel at the time initial permits are issued must register the permit for use with a vessel owned by the permit holder within 12 months from the date the permit was issued. In the interim, the permit holder may register the permit for use with a leased or chartered vessel. If within 12 months of initial permit issuance, the permit holder fails to apply to PIRO to register the permit for use with a ves-

sel owned by the permit holder, then the permit shall expire.

(5) For each of paragraphs (h)(1)(i) through (h)(1)(viii) of this section, PIRO shall assign points based on the landings of one permitted vessel to only one owner if the vessel did not have multiple owners during the time frame covered by the subordinate paragraphs. If a vessel had multiple owners during a time frame covered by any of paragraphs (h)(1)(i) through (h)(1)(viii) of this section (including joint owners, partners, or shareholders of a corporate owner), PIRO will assign the points for that subordinate paragraph to a single owner if only one owner submits an application with respect to the landings of that vessel during that time frame. If multiple owners submit separate applications with respect to the same landings of the same vessel during the same time frame, then PIRO shall:

(i) Adhere to any written agreement between the applicants with respect to who among them shall be assigned the aggregate point(s) generated by landings during such time frame(s), or

(ii) If there is no agreement:

(A) Shall issue the applicants a joint permit provided the vessel's landings during such time frames generated at least three points, or

(B) In the event the vessel's landings during such time frame(s) generated less than three points, shall not assign any points generated by the vessel's landings during such time frame(s).

(i) Ownership requirements and registration of Mau Zone limited access permits for use with other vessels.

(1) A Mau Zone permit may be held by an individual, partnership, or corporation. No more than 49 percent of the underlying ownership interest in a Mau Zone permit may be sold, leased, chartered, or otherwise transferred to another person or entity. If more than 49 percent of the underlying ownership of the permit passes to persons or entities other than those listed in the original permit application supplemental information sheet, then the permit expires and must be surrendered to PIRO.

(2) A Mau Zone permit holder may apply under § 665.13 to PIRO to register the permit for use with another vessel if that vessel is owned by the permit

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holder, and is no longer than 60 ft (18.3 m) LOA.

(3) If a Mau Zone permit holder sells the vessel for which the permit is registered for use, the permit holder must, within 12 months of the date of sale, apply to PIRO to register the permit for use with a vessel owned by the permit holder. If the permit holder has not applied to register a replacement vessel within 12 months, then the permit expires.

(4) If a permitted vessel owned by the permit holder is sold or becomes unseaworthy, the Mau Zone permit with which the vessel was registered may be registered for use with a leased or chartered vessel for a period not to exceed 12 months from the date of registration of the leased or chartered vessel. If by the end of that 12-month period the permit holder fails to apply to PIRO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(j) Mau Zone limited access permit renewal.

(1) A Mau Zone permit will be eligible for renewal if the vessel for which the permit is registered for use made at least five separate fishing trips with landings of at least 500 lb (227 kg) of Hawaii bottomfish MUS per trip during the calendar year. Only one landing of bottomfish MUS per fishing trip to the Mau Zone will be counted toward the landing requirement.

(2) If the vessel for which the permit is registered for use fails to meet the landing requirement of paragraph (j)(1) of this section, the owner may apply to the Regional Administrator for a waiver of the landing requirement. Grounds for a waiver are limited to captain incapacitation, vessel breakdowns, and the loss of the vessel at sea if the event prevented the vessel from meeting the landing requirement. Unprofitability is not sufficient for waiver of the landing requirement.

(3) Failure of the permit holder to register a vessel for use under the permit does not exempt a permit holder from the requirements specified in this paragraph.

(k) Appeals of permit actions.

(1) Except as provided in subpart A of 15 CFR part 904, any applicant for a permit or a permit holder may appeal

the granting, denial, or revocation of his or her permit to the Regional Administrator.

(2) In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action appealed, and the reasons therefore, and must be submitted within 30 days of the appealed action. The appellant may request an informal hearing on the appeal.

(3) The Regional Administrator, in consultation with the Council, will decide the appeal in accordance with the FEP and implementing regulations and based upon information relative to the application on file at NMFS and the Council, the summary record kept of any hearing, the hearing officer's recommended decision, if any, and any other relevant information.

(4) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. The applicant or permit holder may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. The Regional Administrator's decision on the application is the final administrative decision of the Department of Commerce, and is effective on the date the Administrator signs the decision.

§ 665.204 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for Hawaii bottomfish or sea-mount groundfish MUS using gear prohibited under § 665.206.

(b) Fish for, or retain on board a vessel, Hawaii bottomfish MUS in the Ho'omalau Zone or the Mau Zone without the appropriate permit registered

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for use with that vessel issued under § 665.13.

(c) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalulu Zone permit without completing a protected species workshop conducted by NMFS, as required by § 665.203.

(d) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalulu Zone, as required by § 665.205.

(e) Fish within any protected species study zone in the NWHI without notifying the Regional Administrator of the intent to fish in these zones, as required under § 664.205.

(f) Falsify or fail to make or file reports of all fishing activities shoreward of the outer boundary of the MHI management subarea, in violation of § 665.14(a) or (b).

(g) Own a vessel or fish from a vessel that is used to fish non-commercially for any Hawaii bottomfish MUS in the MHI management subarea without either a MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of §§ 665.2 or 665.203(a)(2).

(h) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.210, in the MHI management subarea after a closure of the fishery, in violation of § 665.211.

(i) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in § 665.210, after a closure of the fishery, in violation of § 665.211.

(j) Harvest, possess, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in § 665.210 from a vessel in the MHI management subarea, while holding a MHI non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of § 665.212.

(k) Fish for or possess any Hawaii bottomfish or seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area, in violation of § 665.209.

[75 FR 2205, Jan. 14, 2010, as amended at 75 FR 69015, Nov. 10, 2010]

§ 665.205 Notification.

(a) The owner or operator of a fishing vessel subject to § 665.203(a)(1) must in-

form PIRO at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 665.201. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The operator of a fishing vessel that has taken Hawaii bottomfish MUS in the Ho'omalulu 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.

§ 665.206 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for Hawaii bottomfish and seamount groundfish MUS 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 § 665.203 or otherwise established to be fishing for Hawaii bottomfish or seamount groundfish MUS in the management subareas is prohibited.

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

§ 665.207 At-sea observer coverage.

(a) All fishing vessels subject to §§ 665.200 through 665.212 must carry an observer when directed to do so by the Regional Administrator.

(b) 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 provided pursuant to § 665.205(a). 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.

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(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 or futon on the floor, or a cot, is not acceptable in place of a regular bunk. Meal and other galley 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 temporary 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.

§ 665.208 Protected species conservation.

The Regional Administrator may change the size of the protected species study zones defined in § 665.201 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.

§ 665.209 Fishing moratorium at Hancock Seamounts.

Fishing for, and possession of, Hawaii bottomfish and seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area is prohibited until the Regional Administrator determines that the armorhead stock is rebuilt.

[75 FR 69016, Nov. 10, 2010]

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§ 665.210 Hawaii restricted bottomfish species.

Hawaii restricted bottomfish species means the following species:

Local name	English common name	Scientific name
lehi	silver jaw jobfish	<i>Aphareus rutilans</i> .
ehu	squirrelfish snapper ..	<i>Etelis carbunculus</i> .
onaga	longtail snapper	<i>Etelis coruscans</i> .
opakapaka	Pink snapper	<i>Pristipomoides filamentosus</i> .
kalekale	snapper	<i>Pristipomoides sieboldii</i> .
gindai	snapper	<i>Pristipomoides zonatus</i> .
hapu'upu'u	sea bass	<i>Epinephelus quernus</i> .

§ 665.211 Total Allowable Catch (TAC) limit.

(a) TAC limits will be set annually for the fishing year by NMFS, as recommended by the Council, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing.

(b) The Regional Administrator shall publish a notice indicating the annual TAC limit in the FEDERAL REGISTER by August 31 of each year, and shall use other means to notify permit holders of the TAC limit for the year.

(c) When the TAC limit specified in this section 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 7 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 TAC is reached.

(d) On and after the date specified in § 665.211(c), no person may fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.210 in the MHI management sub-area, except as otherwise allowed in this section.

(e) On and after the date specified in § 665.211(c), no person may sell or offer for sale Hawaii Restricted Bottomfish Species as specified in § 665.210, except as otherwise authorized by law.

(f) Fishing for, and the resultant possession or sale of, Hawaii Restricted

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Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalū Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

[75 FR 2205, Jan. 14, 2010, as amended at 76 FR 15222, Mar. 21, 2011]

§ 665.212 Non-commercial bag limits.

No more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species as specified in §665.210, may be harvested, possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the MHI management subarea. Charter boat customers are also subject to the bag limit.

§§ 665.213–665.219 [Reserved]

§ 665.220 Hawaii coral reef ecosystem fisheries. [Reserved]

§ 665.221 Definitions.

As used in §§665.220 through 665.239:

Hawaii coral reef ecosystem management unit species (Hawaii coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

Hawaii Currently Harvested Coral Reef Taxa:

Family name	Local name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	na'ena'e	orange-spot surgeonfish	<i>Acanthurus olivaceus</i> .
	Pualu	yellowfin surgeonfish	<i>Acanthurus xanthopterus</i> .
	Manini	convict tang	<i>Acanthurus triostegus</i> .
	Palani	eye-striped surgeonfish	<i>Acanthurus dussumieri</i> .
	Maiko	blue-lined surgeon	<i>Acanthurus nigroris</i> .
	maiko, maikoiko	whitebar surgeonfish	<i>Acanthurus leucopareus</i> .
		whitecheek surgeonfish	<i>Acanthurus nigricans</i> .
	'api	white-spotted surgeonfish	<i>Acanthurus guttatus</i> .
	Pualu	ringtail surgeonfish	<i>Acanthurus blochii</i> .
	mai'i'i	brown surgeonfish	<i>Acanthurus nigrofuscus</i> .
	Kole	yellow-eyed surgeonfish	<i>Ctenochaetus strigosus</i> .
	NA	striped bristletooth	<i>Ctenochaetus striatus</i> .
	Kala	bluespine unicornfish	<i>Naso unicornus</i> .
	kalalei, umaumalei	orangespine unicornfish	<i>Naso lituratus</i> .
	kala holo	black tongue unicornfish	<i>Naso hexacanthus</i> .
	Kala	whitemargin unicornfish	<i>Naso annulatus</i> .
	kala lolo	spotted unicornfish	<i>Naso brevirostris</i> .
		gray unicornfish	<i>Naso caesius</i> .
		yellow tang	<i>Zebrasoma flavescens</i> .
		pinktail triggerfish	<i>Melichthys vidua</i> .
Balistidae (Triggerfish)	lau'ipala	black triggerfish	<i>Melichthys niger</i> .
	humuhumu hi'ukole	picassofish	<i>Rhinecanthus aculeatus</i> .
Carangidae (Jacks)	humuhumu 'ele'ele	bridled triggerfish	<i>Sufflamen fraenatum</i> .
	humuhumu nukunuku apua'a	bigeye scad	<i>Selar crumenophthalmus</i> .
Carcharinidae (Sharks)	akule, hahalu	mackerel scad	<i>Decapterus macarellus</i> .
	'opelu, 'opelu mama	grey reef shark	<i>Carcharhinus amblyrhynchus</i> .
Carcharinidae (Sharks)	Man	galapagos shark	<i>Carcharhinus galapagensis</i> .
	Man	blacktip reef shark	<i>Carcharhinus melanopterus</i> .
Holocentridae (Soldierfish/ Squirrelfish)	man lalakea	whitetip reef shark	<i>Triaenodon obesus</i> .
	menpachi, 'u'u	bigscale soldierfish	<i>Myripristis berndti</i> .
Holocentridae (Soldierfish/ Squirrelfish)	menpachi, 'u'u	brick soldierfish	<i>Myripristis amaena</i> .
	menpachi, 'u'u	yellowfin soldierfish	<i>Myripristis chryseres</i> .
Holocentridae (Soldierfish/ Squirrelfish)	menpachi, 'u'u	pearly soldierfish	<i>Myripristis kuntze</i> .
	'ala'ihī	file-lined squirrelfish	<i>Sargocentron microstoma</i> .
Holocentridae (Soldierfish/ Squirrelfish)	'ala'ihī	crown squirrelfish	<i>Sargocentron diadema</i> .
	'ala'ihī	peppered squirrelfish	<i>Sargocentron punctatissimum</i> .
Holocentridae (Soldierfish/ Squirrelfish)	'ala'ihī	blue-lined squirrelfish	<i>Sargocentron tiee</i> .
	'ala'ihī	Hawaiian squirrelfish	<i>Sargocentron xantherythrum</i> .
Holocentridae (Soldierfish/ Squirrelfish)	'ala'ihī	saber or long jaw squirrelfish	<i>Sargocentron spiniferum</i> .
	'ala'ihī	spotfin squirrelfish	<i>Neoniphon spp.</i>
Kuhliidae (Flagtails)	'aholehole	Hawaiian flag-tail	<i>Kuhlia sandvicensis</i> .
Kyphosidae (Rudderfish)	Nenue	rudderfish	<i>Kyphosus biggibus</i> .
	Nenue	rudderfish	<i>Kyphosus cinerascens</i> .
Labridae (Wrasses)	Nenue	rudderfish	<i>Kyphosus vaigiensis</i> .
	'a'awa	saddleback hogfish	<i>Bodianus bilunulatus</i> .
Labridae (Wrasses)	po'ou	ring-tailed wrasse	<i>Oxycheilinus unifasciatus</i> .
	laenihī, nabeta	razor wrasse	<i>Xyrichtys pavo</i> .
Labridae (Wrasses)	kupoupou ho'u	cigar wrasse	<i>Chelilio inermis</i> .

Family name	Local name	English common name	Scientific name
Mullidae (Goatfishes)	Weke weke nono weke'ula weke'a or weke a'a kumu, moano Munu moano kea, moano kale Malu Moano weke pueo 'ama'ama 'Uouoa	surge wrasse red ribbon wrasse sunset wrasse rockmover wrasse yellow goatfish orange goatfish yellowfin goatfish yellowstripe goatfish banded goatfish doublebar goatfish yellowsaddle goatfish side-spot goatfish multi-barred goatfish bandtail goatfish stripped mullet false mullet	<i>Thalassoma purpurum</i> . <i>Thalassoma quinquevittatum</i> . <i>Thalassoma lutescens</i> . <i>Novaculichthys taeniourus</i> . <i>Mulloidichthys</i> spp. <i>Mulloidichthys pfluegeri</i> . <i>Mulloidichthys vanicolensis</i> . <i>Mulloidichthys flavolineatus</i> . <i>Parupeneus</i> spp. <i>Parupeneus bifasciatus</i> . <i>Parupeneus cyclostomas</i> . <i>Parupeneus pleurostigma</i> . <i>Parupeneus multifasciatus</i> . <i>Upeneus arge</i> . <i>Mugil cephalus</i> . <i>Neomyxus leuciscus</i> .
Mugilidae (Mulletts)	Puhi Puihi puhi laumilo Puihi	yellowmargin moray eel giant moray eel undulated moray eel dragon eel	<i>Gymnothorax flavimarginatus</i> . <i>Gymnothorax javanicus</i> . <i>Gymnothorax undulatus</i> . <i>Enchelycore pardalis</i> . <i>Octopus cyanea</i> . <i>Octopus ornatus</i> . <i>Polydactylus sexfilis</i> .
Muraenidae (Moray eels)	he'e mauli, tako he'e, tako Moi	octopus threadfin	<i>Octopus cyanea</i> . <i>Octopus ornatus</i> . <i>Polydactylus sexfilis</i> .
Polynemidae	'aweoweo	glasseye	<i>Heteropriacanthus cruentatus</i> .
Priacanthidae (Big-eyes)	'aweoweo uhu, palukaluka	bigeye parrotfish	<i>Priacanthus hamrur</i> . <i>Scarus</i> spp.
Scaridae (Parrotfish)	panuhunuhu kawe'e'a, kaku Kaku	stareye parrotfish Heller's barracuda great barracuda	<i>Calotomus carolinus</i> . <i>Sphyræna helleri</i> . <i>Sphyræna barracuda</i> . <i>Turbo</i> spp.
Sphyrænidae (Barracuda)		green snails turban shells	<i>Zanclus cornutus</i> . <i>Chaetodon auriga</i> . <i>Chaetodon lunula</i> . <i>Chaetodon ephippium</i> .
Turbinidae	kihikihi	moorish idol	<i>Zanclus cornutus</i> .
Zanclidae	kikakapu	butterflyfish	<i>Chaetodon auriga</i> .
Chaetodontidae	kikakapu	raccoon butterflyfish	<i>Chaetodon lunula</i> .
Sabellidae	kikakapu	saddleback butterflyfish	<i>Chaetodon ephippium</i> .
		featherduster worm.	

Hawaii Potentially Harvested Coral Reef Taxa:

Local name	English common name	Scientific name
Hinalea	wrasses (Those species not listed as CHCRT).	Labridae.
Man	sharks (Those species not listed as CHCRT).	Carcharhinidae, Sphyrnidae.
Hihimanu	rays and skates	Dasyatidae, Myliobatidae.
roi, hapu'upu 'u	groupers, seabass (Those species not listed as CHCRT or in BMUS).	Serranidae.
dobe, kagami, pa'opa'o, papa, omaka, ulua.	tilefishes	Malacanthidae.
'u'u	jacks and scads (Those species not listed as CHCRT or in BMUS).	Carangidae.
weke, moano, kumu	solderfishes and squirrelfishes (Those species not listed as CHCRT).	Holocentridae.
na'ena 'e, maikoiko	goatfishes (Those species not listed as CHCRT).	Mullidae.
Puhi	surgefishes (Those species not listed as CHCRT).	Acanthuridae.
'upapalu	remoras	Echeneidae.
Nehu	eels (Those species not listed as CHCRT).	Muraenidae, Congridae, Ophichthidae.
'o'opu	cardinalfishes	Apogonidae.
to'au	herrings	Clupeidae.
Nunu	anchovies	Engraulidae.
nunu peke	coral crouchers	Caracanthidae.
Kihikihi	gobies	Gobiidae.
Kikakapu	snappers (Those species not listed as CHCRT or in BMUS).	Lutjanidae.
Mamo	trumpetfish	<i>Aulostomus chinensis</i> .
nohu, okoze	cornetfish	<i>Fistularia commersoni</i> .
pa o'o	moorish Idols	Zanclidae.
	butterflyfishes	Chaetodontidae.
	angelfishes	Pomacanthidae.
	damsel-fishes	Pomacentridae.
	scorpionfishes, lionfishes	Scorpaenidae.
	blennies	Blenniidae.

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Local name	English common name	Scientific name
Kaku	barracudas (Those species not listed as CHCRT).	Sphyraenidae.
paki'i	sandperches	Pinguipedidae.
Makukana	flounders and soles	Bothidae, Soleidae, Pleurnectidae.
humu humu	trunkfishes	Ostraciidae.
Nenue	trigger fishes (Those species not listed as CHCRT).	Balistidae.
po'opa'a	rudderfishes (Those species not listed as CHCRT).	Kyphosidae.
'o'opu hue, fugu	hawkfishes (Those species not listed as CHCRT).	Cirrhitidae.
namako, lolé, wana	puffer fishes and porcupine fishes	Tetradontidae.
ko'a	frogfishes	Antennariidae.
ko'a	pipefishes and seahorses	Syngnathidae.
ko'a	sea cucumbers and sea urchins (Those species not listed as CHCRT).	Echinoderms.
ko'a	ahermatypic corals	Mollusca.
ko'a	mushroom corals	Azooxanthellates.
ko'a	small and large coral polyps	Fungiidae.
ko'a	soft corals and gorgonians	Actinaria.
ko'a	anemones	Zoanthinaria.
ula, a'ama, mo'ala, 'alakuma	soft zoanthid corals	Solanderidae.
ula, a'ama, mo'ala, 'alakuma	hydroid corals	Stylasteridae.
ula, a'ama, mo'ala, 'alakuma	lace corals	Crustaceans.
ula, a'ama, mo'ala, 'alakuma	lobsters, shrimps, mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS).	Hydrozoans, Bryzoans.
ula, a'ama, mo'ala, 'alakuma	black-lip pearl oyster	<i>Pinctada margaritifera</i> .
ula, a'ama, mo'ala, 'alakuma	other clams	Other Bivalves.
ula, a'ama, mo'ala, 'alakuma	sea squirts	Tunicates.
ula, a'ama, mo'ala, 'alakuma	sponges	Porifera.
tako, he'e	octopi	Cephalopods.
tako, he'e	sea snails	Gastropoda.
tako, he'e	sea slugs	Opisthobranchs.
Limu	seaweed	Algae.
Limu	segmented worms (Those species not listed as CHCRT).	Live rock.
Limu	segmented worms (Those species not listed as CHCRT).	Annelids.

All other Hawaii coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the Hawaii CHCRT table or are not Hawaii bottomfish, crustacean, precious coral, seamount groundfish or western Pacific pelagic MUS.

§ 665.222 Management area.

The Hawaii coral reef ecosystem management area is as follows:

(a) The U.S. EEZ around the Hawaiian Archipelago lying to the east of 160°50' W. long.

(b) The inner boundary of the management area is the seaward boundary of the State of Hawaii.

(c) The outer boundary of the management area is the outer boundary of the U.S. EEZ.

§ 665.223 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Hawaii coral reef ecosystem management area, fishing for Hawaii coral reef ecosystem MUS is not allowed within the boundary of a Na-

tional Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.224 Permits and fees.

(a) *Applicability.* Unless otherwise specified in this subpart, § 665.13 applies to Hawaii coral reef ecosystem permits.

(1) *Special permit.* Any person of the United States fishing for, taking or retaining Hawaii coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Hawaii coral reef ecosystem MUS in low-use MPAs as defined in § 665.199;

(ii) Hawaii Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) Hawaii coral reef ecosystem MUS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Hawaii coral reef ecosystem management area to land or transship PHCRT, or any Hawaii coral reef ecosystem MUS harvested within low-use MPAs.

(3) *Exceptions.* The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches Hawaii coral reef ecosystem MUS while fishing for bottomfish MUS, crustacean MUS, western Pacific pelagic MUS, precious coral, or seamount groundfish.

(ii) Any person fishing for Hawaii CHCRT outside of an MPA, who does not retain any incidentally caught Hawaii PHCRT; and

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) *Validity.* Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) *Special permit.* The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) *Application.* An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.*, stored live, fresh, frozen, preserved, sold for food, ornamental, research, or other use, and

a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) *Incomplete applications.* The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the USCG, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it

is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to, issues related to spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) *Appeals of permit actions.* (i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based on information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and

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the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such a hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for good cause, for a period not to exceed 30 days, by the Regional Administrator, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.225 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chap-

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ter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any Hawaii coral reef ecosystem MUS in any low-use MPA as defined in § 665.199 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.224; or

(3) The Hawaii coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Hawaii coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.227.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.224.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.226 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Hawaii coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.227 Allowable gear and gear restrictions.

(a) Hawaii coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

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- (5) Hoop net for Kona crab;
- (6) Throw net;
- (7) Barrier net;
- (8) Surround/purse net that is attended at all times;
- (9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);
- (10) Crab and fish traps with vessel ID number affixed; and
- (11) Remote-operating vehicles/submersibles.

(b) Hawaii coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for Hawaii coral reef ecosystem MUS in the Hawaii management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected state fishery management agency.

§ 665.228 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.224 or that is otherwise established to be fishing for Hawaii coral reef ecosystem MUS in the Hawaii management area.

(b) *Enforcement action.* (1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the Hawaii coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the Hawaii coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.229–665.239 [Reserved]

§ 665.240 Hawaii crustacean fisheries. [Reserved]

§ 665.241 Definitions.

As used in §§ 665.240 through 665.259:

Hawaii crustacean management area is divided into the following areas:

(1) *Crustacean Permit Area 1 (Permit Area 1)* means the EEZ around the NWHI.

(2) *Crustacean Permit Area 2 (Permit Area 2)* means the EEZ around the MHI.

(3) *Crustacean Permit Area 1 VMS Subarea* means an area within the EEZ around the NWHI 50 nm from the center geographical positions of the islands and reefs in the NWHI as follows:

Name	N. lat.	W. long.
Nihoa Island	23°05'	161°55'
Necker Island	23°35'	164°40'
French Frigate Shoals	23°45'	166°15'
Gardner Pinnacles	25°00'	168°00'
Maro Reef	25°25'	170°35'
Laysan Island	25°45'	171°45'
Lisianski Island	26°00'	173°55'
Pearl and Hermes Reef	27°50'	175°50'
Midway Island	28°14'	177°22'
Kure Island	28°25'	178°20'

The remainder of the VMS subarea is delimited by parallel lines tangent to and connecting the 50-nm areas around the following: from Nihoa Island to Necker Island; from French Frigate Shoals to Gardner Pinnacles; from Gardner Pinnacles to Maro Reef; from Laysan Island to Lisianski Island; and from Lisianski Island to Pearl and Hermes Reef.

Hawaii crustacean management unit species (Hawaii crustacean MUS) means the following crustaceans:

Local name	English common name	Scientific name
Ula	spiny lobster	<i>Panulirus marginatus</i> , <i>Panulirus penicillatus</i> .
ula papapa	slipper lobster	Scyllaridae.
papa'i kua loa	Kona crab	<i>Ranina ranina</i> .
	deepwater shrimp	<i>Heterocarpus</i> spp.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under § 665.242, and any person who has notified the Regional Administrator of his or her interest in the procedures and decisions described in § 665.248, and who has specifically requested to be considered an “interested party.”

Lobster grounds refers, singularly or collectively, to the following four areas

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in Crustacean Permit Area 1 that shall be used to manage the lobster fishery:

(1) Necker Island Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00' N. lat., 165°00' W. long.; 24°00' N. lat., 164°00' W. long.; 23°00' N. lat., 164°00' W. long.; and 23°00' N. lat., 165°00' W. long.

(2) Gardner Pinnacles Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20' N. lat., 168°20' W. long.; 25°20' N. lat., 167°40' W. long.; 24°20' N. lat., 167°40' W. long.; and 24°20' N. lat., 168°20' W. long.

(3) Maro Reef Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40' N. lat., 171°00' W. long.; 25°40' N. lat., 170°20' W. long.; 25°00' N. lat., 170°20' W. long.; and 25°00' N. lat., 171°00' W. long.

(4) General NWHI Lobster Grounds—all waters within Crustacean Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

§ 665.242 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 must have a permit issued for such a vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Areas 1 or 2 must have a permit issued for that vessel.

(4) Harvest of Hawaii crustacean MUS within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) *Application.* An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the appli-

cation must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) *Lobster Limited Access Permit Requirements.* (1) A lobster limited access permit is valid for fishing only in Crustacean Permit Area 1.

(2) Only one permit will be assigned to any vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

(4) A maximum of 15 limited access permits can be valid at any time.

(e) *Transfer or sale of limited access permits.* (1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, PIRO must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 665.13. The transferred permit is not valid until this process is completed.

(f) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

(g) *Issuance of limited access permits to future applicants.* (1) The Regional Administrator may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

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(2) When the Regional Administrator has determined that limited access permits may be issued to new persons, a notice shall be placed in the FEDERAL REGISTER, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the FEDERAL REGISTER notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Administrator through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Administrator shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of

a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50 percent share in the vessel that the permit would cover.

§ 665.243 Prohibitions.

In addition to the general prohibitions specified in 50 CFR §§ 600.725 and 665.15, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 665.242.

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 665.245.

(iii) From closed areas for lobsters, as specified in § 665.251.

(iv) During a closed season, as specified in § 665.250.

(v) After the closure date, as specified in § 665.252, and until the fishery opens again in the following calendar year.

(vi) In a lobster grounds after closure of that grounds as specified in § 665.252(b).

(2) Fail to report before landing or offloading as specified in § 665.244.

(3) Fail to comply with any protective measures implemented under § 665.248.

(4) Leave a trap unattended in the Hawaii crustacean management area except as provided in § 665.245.

(5) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 665.245.

(6) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 665.252, until the fishery opens again the following year.

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(7) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Administrator for inspection and copying any records that must be made available in accordance with § 665.14(g)(2).

(8) Possess on a fishing vessel that has a limited access permit issued under § 665.242 any lobster trap in Crustacean Permit Area 1 when fishing for lobster is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, or except as allowed under § 665.245(a)(7).

(9) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustacean Permit Area 1 VMS Subarea when fishing for lobsters is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, except as allowed under § 665.245(a)(8).

(10) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same while engaged in the Permit Area 1 fishery; or to move or remove a VMS unit while engaged in the Permit Area 1 fishery without first notifying the Regional Administrator.

(11) Make a false statement, oral or written, to the Regional Administrator or an authorized officer, regarding the certification, use, operation, or maintenance of a VMS unit used in the fishery.

(12) Fail to allow an authorized officer to inspect and certify a VMS unit used in the fishery.

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 665.252(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 665.245; or

(ii) During a closed season, as specified in § 665.250(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 that is less than the minimum size specified in § 665.249.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit

Area 2 in a condition where the lobster is not whole and undamaged as specified in § 665.249.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 665.249.

(5) Possess on a fishing vessel that has a permit for Permit Area 2 issued under this subpart any lobster trap in Permit Area 2 when fishing for lobster in the MHI is prohibited during the months of May, June, July, and August.

(c) In Crustacean Permit Areas 1 and 2, it is unlawful for any person to fish for, take, or retain deepwater shrimp without a permit issued under § 665.242.

§ 665.244 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before off-loading, the location and time that off-loading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraph (a) of this section at least 30 days prior to the opening of the fishing season.

§ 665.245 Gear restrictions.

(a) *Permit Area 1.* (1) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(2) The smallest opening of an entry way of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches (16.5 cm) in diameter to pass from outside the trap to inside the trap.

(3) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(i) Panels must have at least four unobstructed circular holes no smaller than 67 mm in diameter, with centers at least 82 mm apart.

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(ii) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(iii) Panels must be placed opposite one another in each trap.

(4) A vessel fishing for or in possession of lobster in any permit area may not have on board the vessel any trap that does not meet the requirements of paragraphs (a)(1), (2), and (3) of this section.

(5) A maximum of 1,200 traps per vessel may be maintained on board or in the water, provided that no more than 1,100 assembled traps are maintained on board or in the water. If more than 1,100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(6) Traps shall not be left unattended in any permit area, except in the event of an emergency, in which case the vessel operator must notify the SAC of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port.

(7) A vessel whose owner has a limited access permit issued under this subpart and has an operating VMS unit certified by NMFS may enter Crustacean Permit Area 1 with lobster traps on board on or after June 25, but must remain outside the Crustacean Permit Area 1 VMS Subarea until the NWHI lobster season opens on July 1.

(8) A vessel whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS may transit Crustacean Permit Area 1, including Crustacean Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 665.252, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

(9) The operator of a permitted vessel must notify the Regional Administrator or an authorized officer no later than June 15 of each year if the vessel will use a VMS unit in the fishery and

allow for inspection and certification of the unit.

(b) Permit Area 2. Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

§ 665.246 Gear identification.

In Permit Area 1, the vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§ 665.247 At-sea observer coverage.

All fishing vessels subject to §§ 665.240 through 665.252 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§ 665.248 Monk seal protective measures.

(a) *General.* This section establishes a procedure that will be followed if the Regional Administrator receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Administrator will notify all interested parties of the facts known about the incident. The Regional Administrator will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* (1) The Regional Administrator will investigate the incident reported and will attempt to:

(i) Verify that the incident occurred.
(ii) Determine the extent of the harm to the monk seal population.

(iii) Determine the probability of a similar incident recurring.

(iv) Determine details of the incident such as:

(A) The number of animals involved.
(B) The cause of the mortality.
(C) The age and sex of the dead animal(s).

(D) The relationship of the incident to the reproductive cycle, for example, breeding season (March-September),

non-breeding season (October-February).

(E) The population estimates or counts of animals at the island where the incident occurred.

(F) Any other relevant information.

(v) Discover and evaluate any extenuating circumstances.

(vi) Evaluate any other relevant factors.

(2) The Regional Administrator will make the results of the investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Administrator will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Administrator will:

(1) Advise the interested parties of his or her conclusion and the facts upon which it is based.

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions for appropriate protective measures.

(e) *Determination of response.* The Regional Administrator will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) *Action by the Regional Administrator.* If the Regional Administrator decides that protective measures are necessary and appropriate, the Regional Administrator will prepare a document that describes the incident, the protective measures proposed, and the reasons for the protective measures; provide it to the interested parties; and request their comments.

(g) *Implementation of protective measures.* (1) If, after completing the steps described in paragraph (f) of this section, the Regional Administrator concludes that protective measures are necessary and appropriate, the Regional Administrator will recommend the protective measures to the Assistant Administrator and provide notice

of this recommendation to the Chairman of the Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Assistant Administrator concurs with the Regional Administrator's recommendation, NMFS will publish an action in the FEDERAL REGISTER that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) *Notification of "no action."* If, at any point in the process described in this section, the Regional Administrator or Assistant Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the FEDERAL REGISTER.

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the Hawaii FEP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the ESA;

(iii) Until the Assistant Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the FEDERAL REGISTER notification, not to exceed 3 months. The measures may be renewed for 3 months after again following procedures in paragraphs (b) through (g) of this section.

(j) *Repeal.* (1) If the Assistant Administrator decides that protective measures may no longer be necessary for the protection of monk seals, the Assistant Administrator will notify the interested parties of this preliminary decision and the facts upon which it is based. The Assistant Administrator will request advice on the proposed repeal of the protective measures.

(2) The Assistant Administrator will consider all relevant information obtained by the Regional Administrator

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or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Assistant Administrator decides to repeal the protective measures—

(i) Interested parties will be notified of the decision; and

(ii) Notification of repeal and the reasons for the repeal will be published in the FEDERAL REGISTER.

(k) *Monk seal emergency protective measures*—(1) *Determination of emergency.* If, at any time during the process described in paragraphs (a) through (j) of this section, the Regional Administrator determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, the Regional Administrator will—

(i) Notify the interested parties of this determination and request their immediate advice and comments.

(ii) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Assistant Administrator.

(2) *Implementation of emergency measures.* If the Assistant Administrator agrees with the recommendation for emergency action—

(i) The Regional Administrator will determine the appropriate emergency protective measures.

(ii) NMFS will publish the emergency protective measures in the FEDERAL REGISTER.

(iii) The Regional Administrator will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Administrator knows are on the fishing grounds also will be notified by radio.

(3) *Effective dates.* (i) Emergency protective measures are effective against a permit holder at 12:01 a.m., local time, of the day following the day the permit holder receives actual notice of the measures.

(ii) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(iii) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 665.252.

§ 665.249 Lobster size and condition restrictions in Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 1 to this part).

(b) Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

(c) A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

§ 665.250 Closed seasons.

(a) Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

(b) Lobster fishing is prohibited in Permit Area 2 during the months of May, June, July, and August.

§ 665.251 Closed areas.

All lobster fishing is prohibited:

(a) Within 20 nm of Laysan Island.

(b) Within the EEZ landward of the 10-fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 665.252 Harvest limitation program.

(a) *General.* Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) *Harvest guideline.* (1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FEP after consultation with the Council.

(2) NMFS shall publish a document indicating the annual harvest guideline in the FEDERAL REGISTER by February

28 of each year and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 665.245(a)(8).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the overall harvest guideline for Crustacean Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustacean Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

(c) *Monitoring and adjustment.* The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Administrator shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

§§ 665.253–665.259 [Reserved]

§ 665.260 *Hawaii precious coral fisheries.* [Reserved]

§ 665.261 *Definitions.*

As used in §§ 665.260 through 665.270:

Hawaii precious coral management unit species (Hawaii precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral)	<i>Corallium secundum</i> , <i>Corallium regale</i> , <i>Corallium laauense</i> .
Gold coral	<i>Gerardia</i> spp., <i>Callogorgia gilberti</i> , <i>Narella</i> spp., <i>Calyptrophora</i> spp.
Bamboo coral	<i>Lepidisis olapa</i> , <i>Acanella</i> spp.
Black coral	<i>Antipathes griggi</i> , <i>Antipathes grandis</i> , <i>Antipathes ulex</i> .

Hawaii precious coral permit area means the area encompassing the precious coral beds within the EEZ around Hawaii. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) *Established beds.* (i) Makapu'u (Oahu), Permit Area E-B-1, includes the area within a radius of 2.0 nm of a point at 21°18.0' N. lat., 157°32.5' W. long.

(ii) Au'au Channel (Maui), Permit Area E-B-2, includes the area west and south of a point at 21°10' N. lat., 156°40' W. long., and east of a point at 21° N. lat., 157° W. long., and west and north

of a point at 20°45' N. lat., 156°40' W. long.

(2) *Conditional beds.* (i) Keahole Point (Hawaii), Permit Area C-B-1, includes the area within a radius of 0.5 nm of a point at 19°46.0' N. lat., 156°06.0' W. long.

(ii) Kaena Point (Oahu), Permit Area C-B-2, includes the area within a radius of 0.5 nm of a point at 21°35.4' N. lat., 158°22.9' W. long.

(iii) Brooks Bank, Permit Area C-B-3, includes the area within a radius of 2.0 nm of a point at 24°06.0' N. lat., 166°48.0' W. long.

(iv) 180 Fathom Bank, Permit Area C-B-4, N.W. of Kure Atoll, includes the

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area within a radius of 2.0 nm of a point at 28°50.2' N. lat., 178°53.4' W. long.

(3) *Refugia*. Westpac Bed, Permit Area R-1, includes the area within a radius of 2.0 nm of a point at 23°18' N. lat., 162°35' W. long.

(4) *Exploratory areas*. Permit Area X-P-H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

§ 665.262 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Hawaii precious coral MUS in any Hawaiian Archipelago precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.261.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.263 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 600.725 and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any Hawaii precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of Hawaii precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.264.

(2) In refugia specified in § 665.261.

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

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.268 or 665.270.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.265 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.264 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.265 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) *Black coral*. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.266 Area restrictions.

Fishing for coral on the WestPac Bed is not allowed. The specific area closed to fishing is all waters within a 2-nm radius of the midpoint of 23°18.0' N. lat., 162°35.0' W. long.

§ 665.267 Seasons.

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

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Makapu'u and Au'au Channel Beds, which have a two-year fishing period that begins July 1 and ends June 30, two years later.

§ 665.268 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapu'u Bed or Au'au Channel Bed, 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 reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.269 Quotas.

(a) *General.* The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.269(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all non-selective coral harvesting after the

quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas 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 quota 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 quota 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.

(d) Quotas for precious coral permit areas.

Type of coral bed	Name of coral bed	Harvest quota in kilograms	Number of years
Established Beds ...	Au'au Channel	Black: 5,000	2
	Makapu'u	Pink: 2,000	2
		Gold: 0 (zero)	
Conditional Beds	180 Fathom Bank	Bamboo: 500	2
		Pink: 222	1
		Gold: 67	1
	Brooks Bank	Bamboo: 56	1
		Pink: 444	1
		Gold: 133	1
	Kaena Point	Bamboo: 111	1
		Pink: 67	1
		Gold: 20	1
	Keahole Point	Bamboo: 17	1
		Pink: 67	1
		Gold: 20	1
Refugia	Westpac	Bamboo: 17	1
Exploratory Area ...	Hawaii	All: 0 (zero)	
		1,000 per area (all species combined except black corals)	1

Notes:

1. No fishing for coral is authorized in refugia.
2. A moratorium on gold coral harvesting is in effect through June 30, 2013.

Fishery Conservation and Management

§ 665.402

§ 665.270 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

[78 FR 32182, May 29, 2013]

Subpart D—Mariana Archipelago Fisheries

§ 665.398 Management area.

The Mariana fishery management area is the EEZ seaward of Guam and CNMI with the inner boundary a line coterminous with the seaward boundaries of Guam and CNMI and the outer boundary 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.

§ 665.399 Area restrictions.

Anchoring by all fishing vessels over 50 ft (15.25 m) LOA is prohibited in the

U.S. EEZ seaward of Guam west of 144°30' E. long. except in the event of an emergency caused by ocean conditions or by a vessel malfunction that can be documented.

§ 665.400 Mariana bottomfish fisheries. [Reserved]

§ 665.401 Definitions.

As used in §§ 665.400 through 665.419:

CNMI commercial bottomfish permit means the permit required by § 665.404(a)(2) to engage in commercial fishing for Mariana bottomfish MUS in the CNMI management subarea.

Guam bottomfish permit means the permit required by § 665.404(a)(1) to use a large vessel to fish for, land, or transship Mariana bottomfish MUS shoreward of the outer boundary of the Guam subarea of the Mariana fishery management area.

Mariana bottomfish management unit species (Mariana bottomfish MUS) means the following fish:

Local name Chamorro/Carolinian	English common name	Scientific name
Lehi/maroobw	red snapper, silvermouth	<i>Aphareus rutilans</i> .
Gogunafon/aiwe	gray snapper, jobfish	<i>Aprion virescens</i> .
Tarakitu/etam	Giant trevally, jack	<i>Caranx ignobilis</i> .
Tarakiton attelong/orong	Black trevally, jack	<i>Caranx lugubris</i> .
Gadao/meteyil	blacktip grouper	<i>Epinephelus fasciatus</i> .
Bueli/bwele	lunartail grouper	<i>Variola louti</i> .
Buninas agaga/falaghal-maroobw	red snapper	<i>Etelis carbunculus</i> .
Abuninas/taighulupegh	red snapper	<i>Etelis coruscans</i> .
Mafuti/atigh	redgill emperor	<i>Lethrinus rubrioperculatus</i> .
Mafuti/loot	Ambon emperor	<i>Lethrinus amboinensis</i> .
Funai/saas	blueline snapper	<i>Lutjanus kasmira</i> .
Buninas/falaghal-maroobw	yellowtail snapper	<i>Pristipomoides auricilla</i> .
Buninas or pakapaka/falaghal-maroobw	pink snapper	<i>Pristipomoides filamentosus</i> .
Buninas/falaghal-maroobw	yelloweye snapper	<i>Pristipomoides flavipinnis</i> .
	pink snapper	<i>Pristipomoides seiboldii</i> .
Buninas-rayao amariyu/falaghal-maroobw	snapper	<i>Pristipomoides zonatus</i> .
Tarakiton tadong/Meseyugh	amberjack	<i>Seriola dumerilii</i> .

§ 665.402 Management subareas.

The Mariana fishery management area is divided into bottomfish management subareas with the following designations and boundaries:

(a) *Guam Management Subarea* means the EEZ seaward of the Territory of Guam, with the inner boundary defined as a line coterminous with the seaward boundary of the Territory of Guam.

(b) *CNMI Management Subarea* means the EEZ seaward of the CNMI. The

CNMI Management Subarea is further divided into subareas with the following designations and boundaries:

(1) *CNMI Inshore Area* means that portion of the EEZ within 3 nautical miles from the shoreline of the CNMI.

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

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is