

oral and written presentations are set forth in Section 1.1206(b).

#### 4. Filing Requirements

17. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 3, 2008, and reply comments on or before March 17, 2008 using: (1) The Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

18. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

19. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

#### G. Additional Information

20. For more information on this *Third Report and Order and Third Further Notice of Proposed Rule Making*, please contact Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), or Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

## II. Ordering Clauses

21. *It is ordered* that, pursuant to the authority contained in Sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this Third Report and Order and Third Further Notice of Proposed Rule Making *is adopted* and the Commission's rules *are hereby amended* as set forth in Appendix C of the Order.

22. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

23. *It is further ordered* that the Commission *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making in a report to be sent to Congress and

the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8-1914 Filed 1-31-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 071211828-7557-01]

RIN 0648-AU22

### Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures in the Main Hawaiian Islands

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would implement management measures for the vessel-based bottomfish fishery in the Main Hawaiian Islands, including requirements for non-commercial (recreational and subsistence) permits and data reporting, a closed season, annual total allowable catch limits, and non-commercial bag limits. The proposed action is intended to end the overfishing of bottomfish in the Hawaiian Archipelago.

**DATES:** Comments must be received on or before March 7, 2008.

**ADDRESSES:** Comments on the proposed rule, identified by 0648-AU22, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov); or

- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

Instructions: All comments received are a part of the public record and will generally be posted to [www.regulations.gov](http://www.regulations.gov) without change. All Personal Identifying Information (for example, name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit Confidential Business Information, or otherwise sensitive or protected

information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 14, including a final environmental impact statement, regulatory impact review, and initial regulatory flexibility analysis, are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226.

**FOR FURTHER INFORMATION CONTACT:**  
Karla Gore, NMFS PIR, 808-944-2273.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This proposed rule is accessible via the World Wide Web at the Office of the **Federal Register's** web site [www.gpoaccess.gov/fr/](http://www.gpoaccess.gov/fr/).

**Background**

Bottomfish fishing in Hawaii is managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), which was developed by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Hawaii bottomfish are managed as a single archipelago-wide multi-species stock complex (bottomfish complex). The bottomfish complex is comprised of certain deep-slope snappers, groupers, and jacks. Fisheries and management programs for Hawaiian bottomfish operate in two large geographic areas--the Northwestern Hawaiian Islands (NWHI) and the main Hawaiian Islands (MHI).

Fishermen use lines with baited hooks to target bottomfish over deep bottom slopes. Fishing trips are usually a day or less, and most bottomfish fishermen also participate in pelagic fisheries (e.g., trolling for tunas, marlins, and related species). Except for a few full-time commercial bottomfish fishermen, most fish for bottomfish no more than 60 days a year.

Data from the Hawaii commercial bottomfish fishery are collected through the State of Hawaii commercial fishing report program. In 2003, the most recent year for which data are available, there were currently about 380 vessels active in the commercial bottomfish fishery. The total 2003 ex-vessel revenue from the commercial bottomfish fishery in the MHI was estimated at \$1.46 million for landings of 273,000 lb (123,831 kg).

There is currently no mandatory permitting or data reporting requirement

for non-commercial fishing. Some data on the non-commercial bottomfish fishery are collected through surveys. NMFS estimates that, based on the State boat registration program and independent surveys, 800-5,000 fishermen participate in the non-commercial bottomfish fishery.

NMFS, on behalf of the Secretary of Commerce, determined that overfishing is occurring on the bottomfish complex in the Hawaiian Archipelago, with the primary problem being excessive fishing mortality on seven deep water species (the "Deep 7" species) in the MHI. The Deep 7 species are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*).

On May 27, 2005, NMFS notified the Council of the overfishing and requested the Council to take appropriate action to end the overfishing (70 FR 34452, June 14, 2005). In response, in May 2006, the Council prepared an FMP amendment and draft regulations that would have reduced fishing mortality on the Deep 7 species by 15 percent, the reduction indicated by the stock assessment at that time.

In September 2006, before the Council amendment was finalized, NMFS updated the status of bottomfish stocks using 2004 data, and concluded that overfishing was still occurring and that bottomfish fishing effort in the MHI would have to be reduced by 24 percent from the 2004 level to bring archipelago-wide bottomfish fishing mortality down to the maximum fishing mortality threshold.

To immediately address the overfishing situation, the Council requested that NMFS close the Hawaii non-commercial and commercial bottomfish fisheries during the summer of 2007. NMFS promulgated an interim rule that closed Federal waters around the MHI to commercial and non-commercial bottomfish fishing for the Deep 7 species from May 15 through September 30, 2007 (72 FR 27065; May 17, 2007). The State of Hawaii also implemented a complementary interim closed season for State waters during the same period.

The Council further developed Amendment 14 and management measures designed to prevent overfishing, commensurate with the 2006 revised bottomfish stock assessment. This proposed rule is intended to end overfishing of the bottomfish stocks around the Hawaiian Archipelago, reduce the fishing mortality for the Deep 7 species in the MHI by approximately 24 percent in

2008 and establish a mechanism (annual TAC) to respond to future changes in stock status, and improve data collection from non-commercial bottomfish fisheries in Federal waters around the MHI.

The proposed rule would implement several management measures for vessel-based bottomfish fishing in the MHI. First, a Federal bottomfish permit would be required for all vessel-based non-commercial fishing for any bottomfish management unit species (not just Deep 7 species) in Federal waters around the MHI. All non-commercial bottomfish fishermen who fish from vessels would be required to obtain this permit by the start of the 2008-09 fishing year (i.e., September 1, 2008). There would be a fee for the permits, and while the exact cost of the permit has not been determined at this time, it would be less than \$80.

Second, the proposed rule would require operators of non-commercial fishing vessels to submit daily Federal logbooks that document bottomfish fishing effort and catch for each fishing trip. The data from these logbooks would be the basis for calculating non-commercial fishing effort and harvest of bottomfish management unit species, bycatch, and interactions with protected species.

Third, the proposed rule would implement a closed season from May 1 through August 30, 2008. During this closure, fishing for Deep 7 species would be prohibited in Federal waters. Fishing for bottomfish species other than Deep 7 species would not be prohibited during the closed season. This summer time period was chosen to maximize protection for Deep 7 bottomfish during their spawning season, and to minimize social and economic impacts to fishery participants (other fishing opportunities are available during the summer, e.g., pelagic trolling).

Fourth, the proposed rule would also establish an annual total allowable catch (TAC) for the MHI bottomfish fishery. The TAC would be determined each fishing year using the best available scientific information, commercial and non-commercial fishing data, and other information, and would consider the associated risk of overfishing. NMFS would publish in the **Federal Register** by August 31 the TAC for the upcoming fishing year, and would use other means to notify permit holders of the TAC. When the TAC is reached, or projected to be reached, NMFS would publish a notice in the **Federal Register** and use other means to notify permit holders that the fishery will be closed on a specified date, providing fishermen

with two weeks advance notice of the closure.

The Council set the TAC for the 2007–08 fishing year (October 2007 through April 2008) at 178,000 lb (80,740 kg) of Deep 7 species. This represents a 24-percent reduction from the 2004 reported commercial fleet-wide catch. When the TAC is reached, all fishing for Deep 7 species will be prohibited in Federal waters around the MHI for the remainder of the fishing year. There is no prohibition on fishing for other bottomfish species throughout the year.

Lastly, the proposed rule would implement Federal bottomfish bag limits for non-commercial fishing. Non-commercial fishermen would be allowed to catch, possess, and land as many as five Deep 7 fish combined, per person, per fishing trip in Federal waters. The State of Hawaii also has a similar bag limit for non-commercial fishing.

### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Bottomfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Public comment is specifically sought in two areas: (1) the potential impacts on the regulated public of the vessel identification requirements in 50 CFR 665.16, and (2) requirements for Federal non-commercial permit holders to report their fishing activity and catch in both Federal and state waters.

The Council prepared a final supplemental environmental impact statement (EIS) for Amendment 14 that discusses the impacts on the environment as a result of this proposed rule. The direct, indirect, short-term, long-term, and cumulative impacts of the proposed action were analyzed. The measures are expected to result in a decrease in fishing effort and this is expected to have a positive impact on the Deep 7 species that are experiencing overfishing. No significant adverse impacts are anticipated on sea turtles, marine mammals, seabirds, Essential Fish Habitat, or Habitat Areas of Particular Concern from either bottomfishing activities or as a result of bottomfishing operations changing to pelagic fishing at times when the bottomfish fishery is closed.

The implementation of a TAC as a fishery management measure does have the potential to result in a “race for the fish” and high-grading (discarding less desirable fish for more desirable fish).

However, the likelihood of either of these scenarios occurring is expected to be low, and if these do occur, the Council and NMFS could take additional action to prevent adverse impacts. The proposed reporting and permitting requirements for non-commercial fishing would provide more comprehensive information for monitoring and managing the bottomfish fishery.

The impact of reduced fishing on non-target fish and bycatch was considered and is not expected to be significant because the measures to end overfishing would also result in a decrease of total catch in both target and non-target fish. Fish mortality due to barotrauma (physical damage to the fish as gases in the gas bladder expand in an uncontrolled manner during rapid ascent) would be reduced through outreach by the Council and NMFS to teach fishermen how to properly resuscitate and release fish. All fish catches would be required to be recorded and counted as part of the TAC, so it is believed that this will help to discourage high-grading.

The proposed rule is not expected to have significant adverse economic impacts. The impacts of the seasonal closure and TAC limitations might be mitigated for the commercial fishermen because they can offset their losses through moving to pelagic fishing during the seasonal closures and after the TAC is reached. The EIS analysis recognizes that during the times the MHI fishery is closed, markets will shift to imports to supply bottomfish, and these markets would need to be re-established by local bottomfish fishermen annually. It is believed that these fluctuations can be managed over time. Non-commercial fishermen that are required to stop fishing once TAC is reached would also be able to fish for non-Deep 7 or pelagic species.

The proposed rule is not expected to result in significant adverse or disproportionate impacts on fishing communities, native Hawaiians, or on members of minority or low-income groups. Adverse impacts would be spread among all fishery participants, and the measures will benefit the fishery in the long run, and provide a sustainable harvest of bottomfish in the future.

Overall, the proposed rule is expected to have positive environmental impacts by ensuring that the bottomfish complex will no longer be subject to overfishing. A copy of the environmental impact statement is available from the Council (see **ADDRESSES**).

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

An initial regulatory flexibility analysis (IRFA) (including a supplemental IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** of the preamble. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities, as follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble to this rule. This rule does not duplicate, overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements for commercial vessels in the proposed rule. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size.

### Description and Estimate of the Number of Small Entities to Which the Rule Applies

There are approximately 380 vessels engaged in the harvest of bottomfish based on 2000–03 data. The aggregate gross receipts for these vessels in the bottomfish fishery were \$1.47 M with average gross receipts per vessel of \$3,870 annually. All vessels are considered to be small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are not independently-owned or operated, are not dominant in its field of operation, and have annual gross receipts not in excess of \$4 million. Therefore, there are no disproportionate economic impacts between large and small entities.

### Description of Alternatives

#### Alternative 1: No Action

Alternative 1 is to take no Federal action; that is, no Federal management measures would be recommended by the Council for approval and implementation at this time. Under this alternative, overfishing in the bottomfish fishery in the Hawaiian Archipelago would continue. This alternative would allow continued open access for entry into the MHI fishery. MHI commercial fishermen would be required to submit catch reports but non-commercial fishermen would not be required to submit catch reports, so the non-commercial catch component of the total harvest would remain unknown.

#### Alternative 2: May – September Seasonal Closure

Under Alternative 2, an annual summer closure would be implemented from May 1 to September 30 for the entire MHI

bottomfish fishery (both commercial and non-commercial vessels). Targeting, possessing, landing, or selling Deep 7 species caught in the MHI would be prohibited during the closed season. The NWHI bottomfish fishery would remain open until it is phased out in 2011. Bottomfish imports and NWHI bottomfish would be exempt from the prohibition. All vessel operators (both commercial and non-commercial) targeting bottomfish in the MHI would be required to register their vessels on an annual basis and would be required to complete and submit reports of their catch, fishing effort, and area fished. In addition, each vessel would be required to be marked on an unobstructed upper surface with its registration number.

Implementing this seasonal closure for both the commercial and non-commercial fishery, based on mean monthly landings, would result in an approximate 25 percent reduction of fishing mortality, however, parallel State regulations would be needed for this alternative to be feasible and effective. Based on mean monthly landings (1998–2004), a May through September closed period, would meet the current 24 percent target reduction, if significant temporal redistribution of fishing effort does not occur. During the open season the non-commercial component would have to adhere to the existing State non-commercial bag limit of five ehu and/or onaga per trip per person, however, this limit may be changed and/or other species may be added.

#### **Alternative 3: Fleet wide TAC**

Alternative 3 would implement a Fleet wide (i.e. combined commercial and non-commercial) TAC designed to result end overfishing. Under this alternative commercial and non-commercial catches would be reported within a specified time limit (as close to 'real time' as is feasible) and a regulatory mechanism would be put into place to close the fishery for the remainder of the fishing year when the combined TAC is reached. The fishing year would begin October 1. The TAC would initially be set at 178,000 pounds of the Deep 7 species (all species combined), representing a 24 percent reduction from the 2004 Fleet wide reported MHI bottomfish catch of these species and would be applied to the MHI commercial Deep 7 bottomfish fishery. Bottomfish fishing would be allowed each fishing year until the TAC was reached, and thereafter no fishing for Deep 7 bottomfish (commercial or non-commercial) would be permitted in the MHI. The TAC would be anticipated to be revised by NMFS in subsequent years based on future stock conditions.

#### **Alternative 4: Commercial TAC and Non-commercial Bag Limit**

Alternative 4 would implement a TAC for the commercial fishery only and close that sector when the TAC is reached. The bottomfish fishing year would start on October 1 which makes it more likely the fishery will be open during the important holiday periods and continue until the TAC was reached. The non-commercial sector would have to adhere to the existing State non-commercial bag limit of 5 ehu and/or onaga per trip per person, however, this limit

may be changed and/or other species may be added by the State. The TAC would initially be set at 178,000 pounds of the Deep 7 species (all species combined), representing a 24 percent reduction from the 2004 Fleet wide reported MHI bottomfish catch of these species (Moffitt et al. 2006) and would be applied to the MHI commercial Deep 7 bottomfish fishery. Bottomfish fishing would be allowed each fishing year until the TAC was reached, and thereafter no fishing for Deep 7 bottomfish (commercial or non-commercial) would be permitted in the MHI. The TAC would be anticipated to be revised by NMFS in subsequent years based on future stock conditions.

#### **Alternative 5: TAC with Limited Access and Non-commercial Bag Limit**

Alternative 5 would implement a commercial TAC in combination with a limited access program for the commercial sector. A limited access system will simplify the determination and monitoring of individual quotas by limiting the number of participants. Only those with limited access permits would be allowed to fish commercially for the Deep 7 bottomfish in the MHI. Each limited access vessel would be required to stop fishing when the TAC was reached. The limited access system would allocate a certain number of permits based on criteria related to past participation in the fishery. The non-commercial catch component would be limited by maintaining the State's existing bag limit but possibly would include other species. The fishing year would begin October 1. The TAC would initially be set at 178,000 pounds of the Deep 7 species (all species combined), representing a 24 percent reduction from the 2004 Fleet wide reported MHI bottomfish catch of these species (Moffitt et al. 2006) and would be applied to the MHI commercial Deep 7 bottomfish fishery. Bottomfish fishing would be allowed each fishing year until the TAC was reached, and thereafter no fishing for Deep 7 bottomfish (commercial or non-commercial) would be permitted in the MHI. The TAC would be anticipated to be revised by NMFS in subsequent years based on future stock conditions.

#### **Alternative 6: Commercial IFQs and Non-commercial Bag Limit**

Alternative 6 would allocate individual fishing quotas (IFQs) to all commercial fishermen (open access), whereby each fisherman is required to stop fishing for the remainder of the fishing year when their individual quota was reached. The sum of quotas would be calculated to meet the necessary fishing mortality reduction. In a sense this alternative is also management using a TAC, however, the TAC is subdivided into individual quotas. The number of fishermen would likely be limited to past participants in the fishery and quota amounts would likely be determined based on individual historical catches. Once a commercial fisherman had landed his respective IFQ, that person would not be permitted to fish for, possess, or sell any bottomfish until the following year. The non-commercial component would have to adhere to the existing State non-commercial

bag limit of 5 ehu and/or onaga per trip per person, however, this limit may be changed and/or other species may be added by the State. The sum of the IFQs would initially be set at 178,000 pounds of the Deep 7 species (all species combined), representing a 24 percent reduction from the 2004 Fleet wide reported MHI bottomfish catch of these species (Moffitt et al., 2006). The sum of the IFQs would be anticipated to be revised by NMFS in subsequent years based on future stock conditions.

Each MHI commercial bottomfish participant with an IFQ would be issued a set of bottomfish stamps, with each stamp representing a certain number of pounds of bottomfish and all the stamps totaling the fisherman's total IFQ. The fisherman would be required to submit a stamp to the dealer at the point of sale. Once all the stamps were submitted the fisherman would be prohibited from fishing until the next open season. The fisherman's bottomfish stamps would be non-transferable.

Under this alternative, commercial fishermen would be required to continue reporting their catches and to stop fishing when their individual quota was reached. Fishery data would be analyzed in real time to monitor landings versus quotas.

#### **Alternative 7: Phased-in TAC Management (Preferred)**

Under Alternative 7, the MHI Deep 7 bottomfish fishery would ultimately be managed under a TAC which would be based on, and applied to, both commercial and non-commercial catches combined. Alternative 7 would utilize a phased-in approach. Phase 1 was to consist of a May–September 2007, seasonal closure of waters around the MHI to both commercial and non-commercial fishing for the Deep 7 species, and this closed period is currently in effect. The 2007 seasonal closure has already been analyzed and implemented for Federal waters by NMFS (72 FR 27065; May 14, 2007) and by the Hawaii DLNR for State waters and is, therefore, not part of the action analyzed in this document.

A commercial Deep 7 TAC of 178,000 lb (80,740 kg, a 24-percent reduction of MHI commercial Deep 7 catches as compared to 2004) would be implemented. Tracking of commercial landings towards this TAC has begun with the reopening of the fishery on October 1, 2007. During the open period, non-commercial catches would continue to be managed by bag limits, however they would be changed from the current five onaga and/or ehu combined per person per trip, to five of any Deep 7 species combined per person per trip and they would be extended into Federal waters via Federal rulemaking under the Council process to ease enforcement. Once commercial Deep 7 landings reached the TAC, both the commercial and non-commercial sectors would be closed.

There would be a Federal permit requirement for all non-commercial fishermen who catch BMUS in the MHI. The operator of a vessel would be responsible for reporting landings of each trip taken. This would provide NMFS with the data needed to calculate and track a non-commercial portion of the overall TAC.

A second seasonal closure to MHI Deep 7 fishing would be implemented from May through August 2008, followed by implementation of a combined commercial and non-commercial Deep 7 TAC beginning September 1, 2008. The non-commercial bag limits would be dropped for the 2008 fishery. However, bag limits could be reinstated depending upon the quality of non-commercial catch data provided by fishermen to the State and NMFS so that an appropriate non-commercial TAC may be selected by the Council. In subsequent years (2009 and beyond) the fishing year would begin on September 1 and the MHI Deep 7 fishery would be managed via a commercial and non-commercial TAC calculated by PIFSC to prevent overfishing of these species.

#### Economic Impacts of the Rule

##### Preferred Alternative 7

The preferred alternative has, in part, been implemented under the interim rule (72 FR 27065; May 14, 2007) that required a seasonal closure of the MHI bottomfish fishery from May–September, 2007. The interim rule implemented a reduction in landings of 25.3 percent from the biological base year of 2004. The biological marker to stop overfishing in the 2007 fishery required that landings be reduced by at least 24 percent from the 2004 base year. The TAC of 178,000 pounds beginning on October 1, 2007 and ending on September 1, 2008 could actually represent a slight increase in economic benefits to individual vessels since the 2007 closure is expected to yield an estimated 25.3 percent reduction from 2004 landings, and the TAC would yield only an estimated 24 percent reduction in revenues assuming that actual prices remained constant between 2004 and 2008 fisheries. This would translate to the possibility of an estimated 5 percent increase in harvest and resulting revenues for the 2008 fishery (October 1, 2007 – September 1, 2008) from the prior year.

Implementation of the TAC could lead to an increased reliance on NWHI bottomfish until this fishery is closed in 2011 and on increased imports of bottomfish. An increased reliance on imported bottomfish would be anticipated to have negative impacts on the entire commercial fishery sector as market channels for fresh MHI bottomfish would be lost and have to be regained each year. Commercial fishery participants may be differentially impacted depending on their ability and willingness to “race to the fish” and some may upgrade their vessels (e.g., buy larger vessels or more powerful engines for existing vessels) or fish during adverse weather in order to achieve high catches before the TAC is reached. These responses would be anticipated to result in over-capitalization (i.e., otherwise unnecessary investments to upgrade vessels) of the fishery and threats to the safety of fishery participants. However, given that bottomfish fishing currently occurs without incident throughout the year it is believed that existing participants are aware of and able to deal with all types of weather and sea conditions.

The seasonal closure in 2008 most likely would have little or no impact on landings since the 2008 TAC of 178,000 lb (80,740 kg)

should be caught prior to the low demand and historically low supply months of May through August. The future requirement to merge landings by the non-commercial sector with the commercial sector in determining annual harvest could have a substantially adverse economic impact to commercial vessels. This would result from the impact of a unique quota that at this time is given only to commercial vessels but would eventually be shared by both non-commercial and commercial fisheries. Future quotas that would be implemented to prevent overfishing could translate into a reduction in availability of fish to the commercial sector determined exactly by an increase in fish available to the non-commercial sector. Considering that for 2007–08 the non-commercial harvest would not be counted as part of the TAC, the initial merging of non-commercial and commercial sector landings under one TAC, which is scheduled to be implemented in Sept. 2008 could result in large economic losses to the vessels comprising the commercial fleet. For example, if it is determined that the non-commercial sector could take 50 percent of the quota, the existing commercial TAC would be reduced by a defacto 50 percent; if the non-commercial sector could take 30 percent of the quota, the commercial quota would be reduced by a defacto 30 percent, and so on.

Economic losses to the commercial sector could be mitigated somewhat by increases to available harvest from improvements to the bottomfish stock and economic benefits derived from other fisheries or other uses of fishing vessels (opportunity costs), to the extent they exist. Given that there could be sizable adverse economic impacts to the commercial fishery resulting from one TAC for commercial and non-commercial sectors, NMFS will complete a Regulatory Flexibility Analysis to determine the economic impacts to commercial vessels when non-commercial landings are estimated and the September 1, 2008–August 31, 2009 TAC is specified. Additionally, by the time the TAC is specified, NMFS should have information on the State of Hawaii’s intentions regarding their bag limit. Since the universe of affected entities under does not include non-commercial fishers, economic impacts to this group are not considered under this supplemental IRFA. However, those impacts were analyzed by the Council as part of the Regulatory Impact Review to assess regional and national economic impacts.

##### Impacts of Other Alternatives

In the short term, the no-action alternative would yield substantial economic benefits to individual vessels since they have been fishing under the 2007 seasonal closure which would be lifted, thus, allowing for a 32 percent increase over 2007 anticipated landings. However, if the overfishing of bottomfish in Hawaii is allowed to continue, the potential is high for reaching an “overfished” state in the bottomfish fishery, which would require a rebuilding plan under which limited or no bottomfish fishing would be allowed for an extended period of time. An overfished and closed fishery would likely result in unquantifiable economic

losses to all bottomfish fishermen, associated businesses, and local fish markets and restaurants. Over time, some of these losses may be stemmed as fishers switch to other fisheries, and fish markets and restaurants secure other sources of fish such as imports and catch from the NWHI.

For alternative 2, based on historical MHI landings, it is estimated that a May through September closure of the MHI Deep 7 bottomfish fishery would result in up to a 25.3 percent reduction in commercial landings of the Deep 7 species as compared to the 2004 baseline identical to the 2007–2008 fishery under the interim closure. Although fishery participants may increase their fishing during the open season, given that summer months have historically been a time of lower bottomfish fishing activity significant increases in effort during the open season are unlikely. The summer closure reduces the availability of “high end” fresh bottomfish to the local markets leading to an increased reliance on imported bottomfish during the closed season. This could have negative impacts on the entire commercial fishery sector because market channels for fresh MHI Deep 7 bottomfish would be lost and may have to be regained each year.

Under alternative 3, the requirement to count both commercial and non-commercial harvest toward a future TAC could yield substantially adverse economic impact to individual vessels as discussed above for the preferred alternative. If the TAC is reached, these alternatives could lead to an increased reliance on NWHI bottomfish until this fishery is closed in 2011 and on increased imports of bottomfish. An increased reliance on imported bottomfish would be anticipated to have negative impacts on the entire commercial fishery sector as market channels for fresh MHI bottomfish would be lost and have to be regained each year. Commercial fishery participants may be differentially impacted depending on their ability and willingness to “race to the fish” and some may upgrade their vessels (e.g., buy larger vessels or more powerful engines for existing vessels) or fish during adverse weather in order to achieve high catches before the TAC is reached. These responses would be anticipated to result in over-capitalization (i.e., otherwise unnecessary investments to upgrade vessels) of the fishery and threats to the safety of fishery participants. The relative importance of MHI Deep 7 species to commercial participants as a percentage of overall fishing (or household) income is unknown as the total suite of fishing (or other income generating) activities undertaken by individual operations across the year have not been examined to date.

Alternatives 4 through 6 contemplate a TAC with non-commercial bag limits managed by the State of Hawaii. The impact of these alternatives would be similar to the impact of the preferred alternative for the 2007–2008 fishery prior to a co-mingling of the commercial and non-commercial harvest. However, alternatives 5 and 6 which introduce limited access and IFQs, respectively, could mitigate problems associated with common property resources as discussed above for alternative 3.

### Ceasing of Business Operations

As discussed above, the co-mingling of commercial and non-commercial harvest to be measured against one TAC for the entire fishery could result in substantial economic loss to commercial fishers. This could conceivably cause some vessels to cease business operations. To address this, NMFS will complete a new RFA prior to implementation of the 2008–2009 TAC.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements (permit requirements under OMB No. 0648 0490, and data collection requirements under OMB No. 0648–0214) have been submitted to OMB for approval.

The proposed rule would require that all non-commercial, i.e., recreational and subsistence, fishermen who for any bottomfish management unit in Federal waters around Hawaii to obtain permits. Permit eligibility would not be restricted in any way, and permits would be renewable on an annual basis. NMFS anticipates that initial permit applications would require 0.5 hours per applicant, with renewals requiring an additional 0.5 hours annually. NMFS estimates that it may receive and process up to 800–5,000 permit applications each year. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at 400–2,500 hours per year. The cost for Federal permits has not been determined but would represent only the administrative cost and is anticipated to be less than \$80 per permit.

The proposed rule would also require either the vessel operator or the vessel owner to submit a catch report for every trip. The estimated time required for completing Federal catch reports is approximately 20 minutes per vessel per fishing trip. Only one logbook report per trip is required and, estimating that 800 to 1,800 vessels would make 10 to 50 trips per year and average 1 day per trip, the program would generate in the range of 8,000 to 90,000 daily fishing logbooks per year. Thus, the total collection-of-information burden estimate for fishing data reporting would be 2,664 to 29,970 hours per year.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see **ADDRESSES**), and by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

### List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: January 28, 2008.

**John Oliver,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

### PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

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

2. In subpart A, add a new § 665.4 to read as follows:

#### § 665.4 Licensing and registration.

Any person who is required to do so by applicable state law or regulation must comply with licensing and registration requirements in the exact manner required by applicable state law or regulation.

3. In § 665.12, revise the definitions of “Commercial fishing”, “Fishing year”, and “Trap”, and add the definitions for “Hawaii Restricted Bottomfish Species Fishing Year 2007–08”, “Hawaii Restricted Bottomfish Species Fishing Year 2008–09 and After”, “Main Hawaiian Islands non-commercial bottomfish permit”, and “Non-commercial fishing”, in alphabetical order to read as follows:

#### § 665.12 Definitions.

\* \* \* \* \*

*Commercial fishing* means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade. All lobster fishing

in Crustaceans Permit Area 1 is considered commercial fishing.

\* \* \* \* \*

*Fishing year* means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31, with the exception of fishing for Hawaii Restricted Bottomfish Species.

\* \* \* \* \*

*Hawaii restricted bottomfish species fishing year 2007–08* means the year beginning at 0001 HST on October 1, 2007, and ending at 2400 HST on April 30, 2008.

*Hawaii restricted bottomfish species fishing year 2008–09 and After* 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 Fishing Permit* means the permit required by § 665.61(a)(4) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any bottomfish management unit species in the Main Hawaiian Islands Management Subarea. If any fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade, by any participants on a vessel-based fishing trip under this section, the entire trip is considered to be a commercial trip.

*Non-commercial fishing* means fishing that does not meet the definition of commercial fishing.

\* \* \* \* \*

*Trap* means a box-like device used for catching and holding lobsters or fish.

\* \* \* \* \*

4. In § 665.13, revise paragraph (g)(2) to read as follows:

#### § 665.13 Permits and fees.

\* \* \* \* \*

(g) \* \* \*

(2) Permits issued under subpart E of this part expire at 2400 HST on December 31 with the exception of Main Hawaiian Islands Non-Commercial Bottomfish Fishing Permits, which expire at 2400 HST on August 31.

\* \* \* \* \*

5. In § 665.14, revise paragraph (a) to read as follows:

#### § 665.14 Reporting and recordkeeping.

(a) *Fishing record forms.* (1) *Applicability.* The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 665.61(a)(2), 665.61(a)(3), 665.61(a)(4), 665.81, or 665.602 must maintain on board the vessel an accurate and complete record of catch, effort, and

other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator. All information specified by the Regional Administrator must be recorded on paper or electronically within 24 hours after the completion of each fishing day. The logbook information, reported on paper or electronically, for each day of the fishing trip must be signed and dated or otherwise authenticated by the vessel operator in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this paragraph (a).

(2) *Timeliness of submission.* (i) If fishing was authorized under a permit pursuant to §§ 665.21, 665.41, 665.61(a)(3), 665.61(a)(4), or 665.81, the original logbook form for each day of the fishing trip must be submitted to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraphs (ii) and (iii) of this section.

(ii) If fishing was authorized under a PRIA bottomfish permit pursuant to § 665.61(a)(2), PRIA pelagic troll and handline permit pursuant to § 665.21(f), crustaceans fishing permit for the PRIA (Permit Area 4) pursuant to § 665.41, or a precious corals fishing permit for Permit Area X-P-PI pursuant to § 665.81, the original logbook form for each day of fishing within the PRIA EEZ waters must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(iii) If fishing was authorized under a permit pursuant to § 665.602, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

\* \* \* \* \*

6. In § 665.61, revise paragraphs (a)(1) though (a)(4) to read as follows:

#### § 665.61 Bottomfish.

(a) *Applicability.* (1) *Northwestern Hawaiian Islands (NWHI).* The owner of any vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Northwestern Hawaiian Islands subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. The 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, become invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (i) 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) *Pacific Remote Island Areas (PRIA).* The owner of any vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Pacific Remote Island Areas subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(3) *Guam large vessel.* The owner of any large vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(4) *Main Hawaiian Islands non-commercial.* Any person who participates in non-commercial, vessel-based fishing, landing, or transshipment of bottomfish management unit species in the Main Hawaiian Islands Management Subarea is required to obtain a permit issued under this section or a State of Hawaii Commercial Marine License. If any commercial

fishing occurs during or as a result of a vessel-based fishing trip under this section, then the fishing trip is considered commercial and not non-commercial.

\* \* \* \* \*

7. In § 665.62, add new paragraphs (j) through (n), as follows:

#### § 665.62 Prohibitions.

\* \* \* \* \*

(j) Falsify or fail to make or file reports of all fishing activities shoreward of outer boundary of the Main Hawaiian Islands Management Subarea, in violation of §§ 665.3 or 665.14(a).

(k) Own a vessel or fish from a vessel, that is used to fish non-commercially for any bottomfish management unit species in the Main Hawaiian Islands Management Subarea without either a Main Hawaiian Islands non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of §§ 665.4 or 665.61(a)(4).

(l) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.71, in the Main Hawaiian Islands Management Subarea after a closure of the fishery, in violation of §§ 665.72 or 665.73.

(m) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in § 665.71, after a closure of the fishery, in violation of §§ 665.72 or 665.73.

(n) Use a vessel to harvest, retain, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in § 665.71 by any individual participating in a vessel-based non-commercial fishing trip in the Main Hawaiian Islands Management Subarea in violation of § 665.74.

8. In subpart E, add a new § 665.71 to read as follows:

#### § 665.71 Hawaii restricted bottomfish species.

Hawaii restricted bottomfish species means the following species:

Common Name	Common Name	Scientific Name
Silver jaw jobfish	Lehi .....	<i>Aphareus rutilans.</i>
Squirrelfish snapper	Ehu .....	<i>Etelis carbunculus.</i>
Longtail snapper	Onaga .....	<i>Etelis coruscans.</i>
Pink snapper	Opakapaka	<i>Pristipomoides filamentosus.</i>
Snapper	Kalekale .....	<i>Pristipomoides sieboldii.</i>
Snapper	Gindai .....	<i>Pristipomoides zonatus.</i>
Sea bass	Hapu'upu'u	<i>Epinephelus quernus.</i>



9. In subpart E, add a new § 665.72 to read as follows:

**§ 665.72 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 Total Allowable Catch 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 reached, or 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 14 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 § 665.72(c), no person may fish for or possess any Hawaii Restricted Bottomfish Species, as specified in § 665.71, in the Main Hawaiian Islands Management Subarea, except as otherwise allowed by law.

(e) On and after the date specified in § 665.72(c), Hawaii Restricted Bottomfish Species, as specified in § 665.71, harvested from the Main Hawaiian Islands Management Subarea, may not be harvested commercially.

(f) The Hawaii restricted bottomfish species TAC limit for the 2007–08 fishing year is 178,000 lb (80,740 kg).

10. In subpart E, add a new § 665.73 to read as follows:

**§ 665.73 Closed seasons.**

(a) All fishing for, or possession of, any Hawaii Restricted Bottomfish Species as specified in § 665.71, is prohibited in the Main Hawaiian Islands Management Subarea during May 1, 2008, through August 31, 2008, inclusive. All such species possessed in the Main Hawaiian Islands Management Subarea are presumed to have been

taken and retained from that Subarea, unless otherwise demonstrated by the person in possession of those species.

(b) Hawaii Restricted Bottomfish Species, as specified in § 665.71, may not be sold or offered for sale during May 1, 2008, through August 31, 2008, inclusive, except as otherwise authorized by law.

(c) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from paragraphs (a) and (b) of this section.

11. Under subpart E, add a new § 665.74 to read as follows:

**§ 665.74 Non-commercial bag limits.**

No more than a total of five fish of all species combined, identified as Hawaii Restricted Bottomfish Species as specified in § 665.71, may be harvested, possessed, or landed by any individual participating in a vessel-based non-commercial fishing trip in the Main Hawaiian Islands Management Subarea. [FR Doc. E8–1900 Filed 1–31–08; 8:45 am]

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