

periods for contract(s) beginning on or after July 1, 2017 through rating periods for contract(s) beginning on or after July 1, 2021, may continue to require pass-through payments to physicians or nursing facilities under the MCO, PIHP, or PAHP contract of no more than the total dollar amount of pass-through payments to physicians or nursing facilities, respectively, identified in the managed care contract(s) and rate certification(s) used to meet the requirement of paragraph (d)(1)(i) of this section. For rating periods for contract(s) beginning on or after July 1, 2022, the State cannot require pass-through payments for physicians or nursing facilities under a MCO, PIHP, or PAHP contract.

Dated: January 3, 2017.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: January 10, 2017.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 160811726-6999-02]

RIN 0648-XE809

Pacific Island Fisheries; 2016-17 Annual Catch Limit and Accountability Measures; Main Hawaiian Islands Deep 7 Bottomfish

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

ACTION: Final specifications.

SUMMARY: In this final rule, NMFS specifies an annual catch limit (ACL) of 318,000 lb of Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2016-17 fishing year. As an accountability measure (AM), if the ACL is projected to be reached, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The ACL and AM support the long-term sustainability of Hawaii bottomfish.

DATES: The final specifications are effective from February 17, 2017, through August 31, 2017.

ADDRESSES: The environmental assessment and finding of no significant impact for this action, identified as NOAA-NMFS-2016-0112, is available at www.regulations.gov, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

The Fishery Ecosystem Plan for the Hawaiian Archipelago is 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, or www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, NMFS PIR Sustainable Fisheries, 808-725-5173.

SUPPLEMENTARY INFORMATION: Through this action, NMFS is specifying an ACL of 318,000 lb of Deep 7 bottomfish in the MHI for the 2016-17 fishing year. The fishing year began September 1, 2016, and ends on August 31, 2017. The Council recommended this ACL, based on the best available scientific, commercial, and other information, taking into account the associated risk of overfishing. This ACL is 8,000 lb lower than the ACL that NMFS specified for the 2015-16 fishing year, and is the second annual reduction in a phased approach to lower the ACL incrementally over three years, as recommended by the Council.

The MHI Management Subarea is the portion of U.S. Exclusive Economic Zone around the Hawaiian Archipelago east of 161°20' W. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Hyporthodus quernus*).

The MHI bottomfish fishing year started September 1, 2016, and is currently open. NMFS will monitor the fishery and, if we project that the fishery will reach the ACL before August 31, 2017, we would, as an AM authorized in 50 CFR 665.4(f), close the non-commercial and commercial fisheries for Deep 7 bottomfish in Federal waters through August 31, 2017. During a fishery closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish in the MHI Management Subarea. There is no prohibition on fishing for, possessing, or selling other (*non-Deep 7*) bottomfish during such a closure. All other management measures continue to apply in the MHI bottomfish fishery. If NMFS and the Council determine that the final 2016-17 Deep 7 bottomfish catch exceeds the ACL, NMFS would

reduce the Deep 7 bottomfish ACL for 2017-18 by the amount of the overage.

You may review additional background information on this action in the preamble to the proposed specifications (81 FR 75803; November 1, 2016); we do not repeat that information here.

Comments and Responses

The comment period for the proposed specifications ended on November 16, 2016. NMFS received comments from four individuals, and responds, as follows:

Comment 1: The 2016-2017 ACL serves as a precautionary measure for bottomfish stocks that supports healthy fisheries. The proposed ACL is greater than recent annual catches, so it would not significantly inconvenience fishermen.

Response: NMFS agrees. We assessed the potential beneficial and adverse impacts of the ACL and AM on the environment, including the fishery itself, and concluded that the action is necessary to prevent overfishing while supporting the long-term sustainability of Hawaii bottomfish.

Comment 2: We need to punish anyone who harms the ocean and any of our waters.

Response: While the comment is not specific to the proposed action, violations of Federal fishery regulations are subject to penalties pursuant to Section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Comment 3: Legislation is needed to reduce overfishing and to protect marine life in Hawaiian waters.

Response: Federal laws and regulations already protect Hawaii fish stocks from overfishing pressure. The Magnuson-Stevens Act includes requirements for ACLs and AMs and other provisions for preventing and ending overfishing and rebuilding fisheries. Unless exempted by law, all fisheries in Federal waters must have ACLs and AMs. Fishery scientists and managers use the best scientific information available, including catch, fishing effort, biological information, etc., to determine the maximum catch that would not harm the conservation needs of the fish stock, and ACLs must be set at or below the levels that account for uncertainty about the fishery information.

AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages when they occur. For the MHI bottomfish fishery, one AM would close the fishery before the scheduled end of the fishing year to prevent exceeding the ACL, and

another AM would reduce next year's ACL by the amount of any overage. These measures help to ensure sustainable harvests.

The reader may find more information on fishing regulations in Hawaii at http://www.fpir.noaa.gov/SFD/SFD_regs_index.html.

Comment 4: The MHI Deep 7 bottomfish stock assessment does not account for fish biomass within the State of Hawaii Bottomfish Restricted Fishing Areas (BRFA), marine protected areas (MPA), and the Kahoolawe Island Reserve.

Response: The 2011 MHI Deep 7 bottomfish stock assessment, as updated with three additional years of data, treats the MHI as a single fishing area and calculates the biomass required to produce the catch and catch per unit effort (CPUE) according to commercial fishery data. The assessment does not make a distinction between biomass inside and outside of protected areas, such as the BRFA, MPA, and Kahoolawe Island Reserve. Nevertheless, the 2011 MHI Deep 7 bottomfish stock assessment, as updated, represents the best scientific information available for this stock complex.

NMFS and the Council are working with the State and the fishing industry to obtain accurate information needed for stock assessments, including data on bottomfish distribution, relative abundance, stock structure, size, and age. Current efforts include working with bottomfish fishermen to conduct scientific surveys using standardized fishing gears and underwater video cameras.

Although stock assessments will likely continue to treat the MHI as a single fishing area, both the State and NMFS continue to try to quantify the effects of the BRFA, MPA, and Kahoolawe Island Reserve on unfished biomass for the MHI Deep 7 bottomfish stock. In Fall 2016, with the cooperation of the State of Hawaii and help from cooperative research fishing partners, NMFS sampled bottomfish inside these protected areas as part of a scientific

survey. NMFS will take into account information from this survey in future stock assessments, as appropriate.

Comment 5: Fishing prohibitions in BFRA and MPA result in more concentrated fishing in unrestricted areas, leading to decreased fish size and lower CPUE.

Response: Because the State catch reporting statistical area boundaries do not match the BRFA boundaries, it is not currently possible to determine if concentrated fishing that may be occurring in unrestricted areas could lead to decreased fish size and lower CPUE in those unrestricted areas. NMFS continues to evaluate the effect of the protected areas on the MHI bottomfish stock (see response to *Comment 4*).

Comment 6: The recent El Niño and unpredictable winds and seas have adversely affected the 2015–16 and 2016–17 MHI Deep 7 fishing seasons, resulting in uncaught fish. How would NMFS consider uncaught biomass in future ACLs?

Response: Councils recommend ACLs in consideration of all relevant information and scientific recommendations concerning stock status. The newly revised National Standard 1 guidelines (81 FR 71858, October 18, 2016) allow councils to develop an acceptable biological catch control rule that would allow for changes in the catch limit to account for the carry-over of some of the unused portion of the ACL from one year to the next, in certain circumstances. The 2016–17 ACL of 318,000 lb is the second annual reduction in a three-year phased approach to prevent overfishing, while supporting the long-term sustainability of Hawaii bottomfish. Therefore, in developing future ACL recommendations, the Council could evaluate a carry-over provision for MHI Deep 7 bottomfish, if the Council determines that such a provision is appropriate and desirable.

Comment 7: The MHI Deep 7 bottomfish fishery is experiencing ongoing problems with shark predation. How is NMFS addressing this issue?

Response: This comment is beyond the scope of the ACL and AM specifications, and NMFS is not currently studying shark predation in the bottomfish fishery. Interested persons may inquire about the availability of fisheries research project funding through, among other sources, the Saltonstall-Kennedy Grant Program (information at http://www.fisheries.noaa.gov/mb/financial_services/skhome.htm).

Changes From the Proposed Specifications

There are no changes in the final specifications from the proposed specifications.

Classification

The Regional Administrator, NMFS PIR, determined that this action is necessary for the conservation and management of MHI Deep 7 bottomfish, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed specification stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed specifications, and does not repeat it here. NMFS did not receive comments regarding this certification. As a result, a final regulatory flexibility analysis is not required, and one was not prepared.

This action is exempt from review under Executive Order 12866.

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

Dated: January 9, 2017.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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