

the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 7/8 inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1 7/8 inches (48 mm) diamond mesh, inside stretch measure. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 4 1/2 inches (11.43 cm) diamond mesh, inside stretch measure. For the purpose of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Illex fishery.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ and fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request) are exempt from the *Loligo* gear requirements specified at paragraph (a)(3) of this section, provided they do not have available for immediate use, as defined in paragraph (b) of this section,

any net, or any piece of net, with a mesh size less than 1 7/8 inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(3) of this section, when the vessel is landward of the specified coordinates.

Point	N. Lat.	W. Long.
M1	43°58.0'	67°22.0'
M2	43°50.0'	68°35.0'
M3	43°30.0'	69°40.0'
M4	43°20.0'	70°00.0'
M5	42°45.0'	70°10.0'
M6	42°13.0'	69°55.0'
M7	41°00.0'	69°00.0'
M8	41°45.0'	68°15.0'
M9	42°10.0'	67°10.0'
M10	41°18.6'	66°24.8'
M11	40°55.5'	66°38.0'
M12	40°45.5'	68°00.0'
M13	40°37.0'	68°00.0'
M14	40°30.0'	69°00.0'
M15	40°22.7'	69°00.0'
M16	40°18.7'	69°40.0'
M17	40°21.0'	71°03.0'
M18	39°41.0'	72°32.0'
M19	38°47.0'	73°11.0'
M20	38°04.0'	74°06.0'
M21	37°08.0'	74°46.0'
M22	36°00.0'	74°52.0'
M23	35°45.0'	74°53.0'
M24	35°28.0'	74°52.0'

\* \* \* \* \*

■ 5. Section 648.25 is added to read as follows:

**§ 648.25 Possession restrictions.**

(a) *Atlantic mackerel.* During a closure of the directed Atlantic mackerel fishery, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(b) *Loligo.* During a closure of the directed fishery for *Loligo*, vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a *Loligo* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time and may only land *Loligo* once on any calendar day.

(c) *Illex.* During a closure of the directed fishery for *Illex*, vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001

hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish.* (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

[Docket No. 071211828-8448-02]

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:** Final rule.

**SUMMARY:** This final rule implements 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. This action is intended to end the overfishing of bottomfish in the Hawaiian Archipelago.

**DATES:** This final rule is effective April 1, 2008, with the following exceptions:

1. The following amendments are effective until September 1, 2008:

a. In § 665.12, the definition of *Hawaii restricted bottomfish species fishing year 2007–08*;

b. Paragraph (g) in § 665.72 (the TAC for the 2007–08 fishing year); and

c. § 665.74 (the closed season).

2. The amendments to §§ 665.13, 665.14, and 665.61, which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

**ADDRESSES:** This final rule implements Amendment 14 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (including a final environmental impact statement, regulatory impact review, and initial regulatory flexibility analysis). Copies of Amendment 14 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. A Record of Decision (ROD) identifying the selected alternative was prepared for this final rule and is available from William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William L. Robinson (see **ADDRESSES**), or to David Rostker, OMB, by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to 202–395–7285.

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

**SUPPLEMENTARY INFORMATION:** This final rule is accessible at the Office of the

**Federal Register's** web site: [www.gpoaccess.gov/fr/](http://www.gpoaccess.gov/fr/).

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).

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, the Council developed Amendment 14 and management measures, which this final rule implements. This final rule will reduce the fishing mortality for the Deep 7 species in the MHI by approximately 24 percent in 2008, will establish a mechanism (annual TAC) to respond to future changes in stock status, and will improve data collection from non-commercial bottomfish fisheries in Federal waters around the MHI.

The final rule implements several management measures for vessel-based bottomfish fishing in the MHI. First, a Federal bottomfish permit is required for vessel owners and fishermen to conduct vessel-based non-commercial fishing for any bottomfish management

unit species (BMUS), not just Deep 7 species, in Federal waters around the MHI (except customers of charter fishing trips).

Second, the final rule requires operators of non-commercial fishing vessels to submit daily Federal logbooks that document bottomfish fishing effort and catch for each fishing trip, and vessel owners share the responsibility for submitting the logbooks in a timely manner. The data from these logbooks will be the basis for calculating non-commercial fishing effort and harvest of BMUS, bycatch, and interactions with protected species.

Third, the final rule implements a closed season from May through August 2008. During this closure, fishing for Deep 7 species will be prohibited in Federal waters. Fishing for bottomfish species other than Deep 7 species will not be prohibited during the closed season.

Fourth, the final rule establishes an annual total allowable catch (TAC) for the MHI bottomfish fishery. The TAC will be determined each fishing year using the best available scientific information, commercial and non-commercial fishing data, and other information, and will consider the associated risk of overfishing. NMFS will publish in the **Federal Register** by August 31 the TAC for the upcoming fishing year, and will use other means to notify permit holders of the TAC. When the TAC is projected to be reached, NMFS will publish notification 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 TAC for the 2007–08 fishing year (October 2007 through April 2008) is set at 178,000 lb (80,740 kg) of Deep 7 species. Progress toward the 2007–08 TAC is determined by the catch reported by holders of Hawaii commercial marine license (CML). When the 2007–08 TAC is projected to be reached, the commercial and non-commercial fisheries for Deep 7 bottomfish will be closed. There is no prohibition on fishing for other bottomfish species throughout the year. NMFS intends to repeal the Federal non-commercial bag limits once the data collected from the non-commercial bottomfish fishery are determined to be adequate to include in the annual TAC calculation.

The final rule implements Federal bottomfish bag limits for non-commercial fishing. Non-commercial fishermen are 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.

Additional background information on this final rule may be found in the preamble to the proposed rule published on February 1, 2008 (73 FR 6101), and is not repeated here.

### Comments and Responses

On December 22, 2007, NMFS announced in the **Federal Register** the availability of Amendment 14 (72 FR 73308), and on February 1, 2008, NMFS published a notice of the proposed rule (73 FR 6101). The public comment period for the amendment ended on February 25, 2008, and the proposed rule comment period ended on March 7, 2008. NMFS received comments from 17 entities, including the State of Hawaii, Department of Land and Natural Resources, and non-commercial and commercial bottomfish fishermen, and responds as follows:

*Comment 1:* NMFS should post online the available portion of the TAC to allow fishermen access to information in a timely manner.

*Response:* NMFS will post the catch trends on the PIRO website at [www.fpir.noaa.gov](http://www.fpir.noaa.gov) to allow tracking of harvests to be counted toward the TAC.

*Comment 2:* A real cause for the decline in Hawaii bottomfish is that kahala (amberjacks) and other non-Deep 7 bottomfish species may be out-competing the Deep 7 bottomfish species.

*Response:* NMFS does not have data to determine whether or not the comment is correct. The final rule will allow for better collection of information from non-commercial bottomfish fishermen which will give fishery managers a better understanding of the catch composition and relative abundance of all BMUS. With improved data, fishery managers can make effective bottomfish management decisions to address these concerns, such as interspecific competition, in the future.

*Comment 3:* Any new data collection requirement for commercial fishermen will lead to duplication of effort and unnecessary expense.

*Response:* The final rule implements new permitting and reporting requirements only for non-commercial bottomfish fishermen. There are no new reporting requirements for any commercial fishermen, who must continue to report their catch to the State of Hawaii. The final rule clarifies the reporting requirements for "mixed" fishing trips where some fishermen hold non-commercial bottomfish permits and some hold State Commercial Marine

Licenses (State CMLs), and for bottomfish charter fishing customers, to minimize redundant reporting.

*Comment 4:* The State's closed areas (bottomfish restricted fishing areas, or BRFAs) should be removed because they reduce suitable fishing grounds and are too restrictive when combined with the new Federal regulations.

*Response:* The BRFAs are under the management purview of the State of Hawaii, and any changes to this management program must be done by the State, not NMFS. The Federal measures implemented by this final rule and the State's BRFAs are both intended to conserve Hawaiian bottomfish.

*Comment 5:* Bag limits should not apply to commercial fishermen, only to non-commercial fishermen.

*Response:* This final rule establishes bag limits only for non-commercial bottomfish fishermen. State-licensed commercial fishermen are not currently subject to bag limits.

*Comment 6:* More enforcement of current State bottomfish regulations is needed.

*Response:* NMFS agrees that more enforcement is generally needed for effective fishery management, whether it is for State or Federal regulations. NOAA's Office for Law Enforcement (NOAA OLE), the U.S. Coast Guard (USCG), and the State of Hawaii's Division of Conservation and Resources Enforcement will work together to enforce the new regulations.

*Comment 7:* All buyers and sellers of bottomfish should be required to submit reports to eliminate the selling of bottomfish by non-commercial fishermen.

*Response:* This final rule requires bottomfish fishermen to be permitted as either commercial or non-commercial, and requires both categories of permits to report their catch. Under current State law, all fish buyers are required to submit State dealer reports for any fish that they purchase. Dealers must purchase fish only from State-licensed commercial fishermen. The dealer report provides a way to cross-reference fish sales by fishermen.

*Comment 8:* The closed season should be the only management measure implemented as it would achieve the desired reduction in catch levels, but be less burdensome to fishermen because it would not require non-commercial permits or reporting.

*Response:* The 2008 closed season is intended to reduce fishing mortality to the target level to end overfishing in the first year. A TAC is more effective and less-burdensome than seasonal closures for preventing overfishing in the long term. To establish a TAC each year,

information about commercial and non-commercial fishing is essential. This management strategy requires that both commercial and non-commercial fishermen hold fishing permits and submit reports on their catch and effort to the State and/or NMFS, as appropriate.

*Comment 9:* The regulations should not include jacks with the other BMUS.

*Response:* Jacks, such as ulua, are BMUS, but they are not Deep 7 species, and fishing for jacks is not restricted by this final rule. Only vessel-based fishing for Deep 7 species is subject to the 2008 closed season and the TAC. Information on the catches of jacks and other BMUS by non-commercial vessel-based fishermen will be collected under the new reporting requirements for comprehensive monitoring of the fishery overall.

*Comment 10:* Many commercial fishermen have relinquished their State CML because of stringent USCG regulations that apply to commercial fishing vessels. The proposed regulations that require all fishing vessels to have permits would be too burdensome on fishermen.

*Response:* This final rule creates permit requirements only for non-commercial bottomfish fishermen. As such, the USCG requirements governing commercial fishing vessels are not within the purview of this final rule.

*Comment 11:* Enforcement of bag limits is difficult and should not be applied to commercial fishermen because it would impact their livelihood.

*Response:* This final rule establishes bag limits only for non-commercial bottomfish fishermen. State-licensed commercial fishermen are not currently subject to bag limits. NOAA OLE, the USCG, and the State of Hawaii Division of Conservation and Resources Enforcement will work together to enforce the new requirements, including non-commercial bag limits.

*Comment 12:* The commercial fishery should be limited to operating twice a week and the non-commercial fishery should operate the remainder of the week with the non-commercial bag limit in place.

*Response:* Daily restrictions and rotating closures were not considered by the Council and NMFS for this final rule. The effectiveness of the rule in ending bottomfish overfishing will be periodically reevaluated, and may be adjusted in the future, if necessary. Alternative management measures, such as daily restrictions and rotating closures, could be considered for future implementation.

*Comment 13:* The TAC should be used to manage the commercial fleet, and the non-commercial fishery should be managed only through bag limits.

*Response:* NMFS has determined that a TAC for both the commercial and non-commercial fleet is the most effective way to ensure that bottomfish stocks do not continue to experience overfishing. Non-commercial bag limits will also help to relieve fishing pressure on the stocks. The effect of these measures will be monitored and adjustments made in the future, if necessary.

*Comment 14:* Non-commercial and commercial vessels should use different colors for vessel marking to make enforcement easier.

*Response:* The final rule establishes requirements for non-commercial bottomfish fishing, while current State regulations continue to apply to commercial fishing. Because the State already has requirements for the identification of bottomfish vessels, this final rule will exempt non-commercial vessels that are compliant with State's vessel marking requirements from the Federal requirements. Special color-coding of vessel markings to facilitate the identification of bottomfish vessels is a good idea, and NMFS will raise the idea with enforcement officials for consideration in future rulemakings.

*Comment 15:* The reporting requirement should be voluntary due to the financial burden that mandatory reporting would impose.

*Response:* Permits and reporting are essential to ensure that accurate and complete information about non-commercial bottomfish fishing is collected for the purposes of setting an appropriate TAC on an annual basis. NMFS estimates that the time burden for completing non-commercial permit applications to be 30 minutes per year, and 20 minutes for reporting catch and effort information in the logbooks after each fishing trip. The logbooks are free to fishermen, and the reporting cost is limited to mailing the reports to NMFS. The permit will cost less than \$80 (probably in the range \$25–40), and NMFS determined the costs associated with permitting and reporting are nominal.

*Comment 16:* The closed season should be five months rather than four months.

*Response:* The Council and NMFS chose a four-month closed season because the best available scientific information indicates that it will provide a balance between reducing fishing effort to levels sufficient to end the overfishing, and providing continued opportunities for bottomfish fishing.

*Comment 17:* A fleet-wide TAC and seasonal closure are the only management measures that should be implemented.

*Response:* The closed season will address overfishing only in 2008. In the long term, a TAC will be the primary measure to end and prevent overfishing of bottomfish. To implement an effective TAC program, information on the numbers of bottomfish fishermen and their effort and catch is needed. Thus, non-commercial permits and data reporting are essential for the overall management program. Currently, information is collected only for one sector, commercial bottomfish fishing. Therefore, collecting information about non-commercial fishing is necessary, and best accomplished through non-commercial permits and data reporting. The non-commercial information will give us a better understanding of the interplay between the bottomfish fishery and other fishing activities. This information will be combined with the commercial data to set an annual TAC to end and prevent overfishing of Hawaiian bottomfish.

*Comment 18:* A TAC will create a "race to the fish," will cause high-grading, and may put smaller vessels at risk as they attempt to catch their share of the TAC fish, possibly in unsafe sea conditions, before the fishery closes.

*Response:* There may be a "race to the fish" early in the open season as fishermen try to ensure that they catch their share of the TAC. However, this final rule adjusts the fishing year to start late in the calendar year so the fishery would likely remain open during the winter holiday season, a time of increased demand for bottomfish. This may reduce some of the incentive to fish during especially unsafe sea conditions. High-grading should not be an issue, as all Deep 7 bottomfish caught, whether kept or discarded, will be counted toward the TAC.

*Comment 19:* The vessel marking requirements for non-commercial fishermen are impractical and onerous. Vessels are already required to be registered and marked according to the State of Hawaii regulations.

*Response:* NMFS agrees, and in the final rule has amended the regulations to exempt from the Federal requirements those vessels that are in compliance with State bottomfish vessel marking requirements.

*Comment 20:* NMFS is asking for comment, but the decisions have already been made regarding the proposed rule.

*Response:* NMFS reads and considers every comment received, and uses these comments to consider whether to

implement or change the proposed regulations, consistent with Amendment 14. Comments received on its proposed rule led NMFS to reconsider several aspects of the rule, and resulted in changes from the proposed rule for several regulations, such as vessel marking requirements.

*Comment 21:* Fishing is not the only cause of the reduced fish population. Pollution, development, and global warming should be considered as they are larger threats against the ecosystem.

*Response:* The final supplementary EIS (FSEIS) considered and analyzed both fishing and non-fishing impacts on bottomfish resources. In addition, the Council is developing fishery ecosystem management plans that would address such non-fishing impacts on the Hawaii ecosystem. Nonetheless, fishing has been identified as a major cause of bottomfish overfishing and, as such, the final rule will control bottomfish fishing mortality so that bottomfish stocks are sustained for future generations.

*Comment 22:* A bag limit of five Deep 7 species is too low.

*Response:* This final rule implements Federal non-commercial bag limits that complement existing State bag limits. The non-commercial bag limit of five Deep 7 bottomfish is consistent with existing State regulations for non-commercial bottomfish fishing. NMFS intends to repeal the Federal non-commercial bag limits once the data collected from the non-commercial bottomfish fishery are determined to be adequate to include in the annual TAC calculation.

*Comment 23:* There should be BRFAs or a seasonal closure, not both.

*Response:* The 2008 closed season is being implemented to immediately end bottomfish overfishing, and the other Federal provisions implemented by this final rule, and the BRFAs, are intended to conserve Hawaiian bottomfish over the long term.

*Comment 24:* Non-commercial bag limits should be eliminated because non-commercial fishermen are already limited by the size of their vessels, storage capacity, and weather.

*Response:* This final rule implements Federal non-commercial bag limits that complement existing State bag limits. NMFS intends to repeal the Federal non-commercial bag limits once the data collected from the non-commercial bottomfish fishery are determined to be adequate to include in the annual TAC calculation.

*Comment 25:* The non-commercial permit and reporting requirement should be on a one-year trial basis. If at the end of one year, non-commercial fishermen are significantly contributing

to the bottomfish catch the permit and reporting would continue. If not, it could be eliminated.

*Response:* NMFS and the Council will monitor the fishery and evaluate the effectiveness of these measures in ending and preventing overfishing of Hawaiian bottomfish. The Council and NMFS may consider adjustments to the fishery management regime in the future, if necessary.

*Comment 26:* Reporting requirements for non-commercial fishermen should be kept simple to reduce the burden to fishermen.

*Response:* The reporting forms have been designed to record only the basic information required to effectively monitor the fishery. The forms will come with instructions and contact information for further questions about the forms. Comments on the form and the reporting burden can be sent 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.

*Comment 27:* Clarify how the permit requirement and associated fee differ from the recreational fishermen registry created under the reauthorized Magnuson-Stevens Act and which is not able to charge a fee until 2011.

*Response:* This final rule implements non-commercial bottomfish permits and data collection under section 303 of the Magnuson-Stevens Act, specifically to collect fishery information to be used by managers to end overfishing of bottomfish in Hawaii. That section of the Act authorizes the collection of fees for the issuance of such permits. The recreational fishermen registry is authorized under Section 401 of the Magnuson-Stevens Act as a national registration program for recreational fishing in all regions (not specifically the Hawaiian bottomfish fishery) and the Magnuson-Stevens Act authorizes the collection of fees for that program beginning in 2011.

*Comment 28:* The non-commercial fee is higher than the commercial fee which might make fishermen more inclined to get the commercial permit.

*Response:* Holding either a Federal non-commercial permit or State CML satisfies the requirements of this final rule. The fee for the non-commercial permit has not yet been determined, as it is dependent on the number of permits issued. The preamble to the proposed rule noted that the fee would not exceed \$80 per person, and it will probably be in the range of \$25-40.

*Comment 29:* Federal reporting requirements will require fishermen to report all BMUS while the State of Hawaii requires reporting of Deep 7

species only. These inconsistent requirements make reporting confusing to fishermen who fish in both State and Federal waters.

*Response:* The State requires commercial fishermen (State CML holders) to report all species caught, and NMFS believes that the collection of information regarding all BMUS is essential to understand the combined impact of commercial and non-commercial fishing on Hawaiian bottomfish stocks.

*Comment 30:* If fishermen report interactions with protected species, as indicated on the reporting requirements, they may be held liable under the Endangered Species Act (ESA).

*Response:* NMFS completed a biological opinion under section 7 of the ESA that analyzed the impacts of implementing this final rule on endangered and threatened species. That opinion, dated March 18, 2008, concluded that this action is not likely to adversely affect the Hawaiian monk seal, and is likely to adversely affect the endangered/threatened green sea turtle. The incidental take of up to two green sea turtles per year is authorized for the Hawaii bottomfish fishery. The Federal logbooks will provide fishermen the opportunity to report protected species interactions, including sea turtles and marine mammals. NOAA OLE will investigate reported interactions on a case-by-case basis to ascertain the nature of the interaction and whether or not it was authorized.

*Comment 31:* The preamble of the proposed rule noted that the non-commercial bag limit would be eliminated in 2008, but that is not reflected in the regulatory text.

*Response:* The preamble to the proposed rule inadvertently indicated that the bag limits would be repealed in 2008, but should have read that NMFS will repeal the Federal non-commercial bag limits once the data collected from the non-commercial bottomfish fishery are determined to be adequate to include in the annual TAC calculation. The final rule clarifies this point.

*Comment 32:* It is unrealistic to believe that fish suffering from barotrauma can be resuscitated.

*Response:* Reduction of bottomfish barotrauma is possible with correct handling procedures, and NMFS plans to work with the State and Council to provide information to fishermen on effective ways to handle fish to reduce barotrauma.

*Comment 33:* Fishermen will not honestly report their non-target fish and bycatch for fear of reaching the TAC sooner.

*Response:* The TAC will be calculated only for the reported catch of Deep 7 bottomfish species, and once the TAC is reached, only the fishery for Deep 7 will be closed; fishing for other species may continue. Information on other bottomfish and pelagic species caught will provide NMFS and the Council with a comprehensive picture of the non-commercial bottomfish fishery, its interplay with related fisheries, and the biological, social, and economic impacts of fishermen switching among gear types and target species. Honest reporting, and effective enforcement of reporting requirements, is essential to the calculation of an effective TAC, and if the bottomfish stocks continue to experience overfishing, more restrictive management measures may become necessary in the future.

*Comment 34:* The regulations do not take into account the fact that during the closed season fishing supply stores, many of which are "mom and pop" operations, and the fish auction will lose revenues as the market shifts to imports.

*Response:* NMFS recognizes that certain businesses will be affected by this final rule related to effort restrictions in the bottomfish fishery, and may experience a temporary downturn in revenues. This downturn may be offset, however, by increased fishing activity for non-Deep 7 bottomfish, and in the pelagic and other fisheries. In addition, the closed season is scheduled to take place during the months of historically low bottomfish fishing effort and lower demand. The expected result of this management regime is to increase the productivity of the bottomfish fishery in the long run which will lead to an increase in profitability to vessels, fishing gear suppliers, vessel support operations, fish markets, food and fuel providers, and other related businesses.

*Comment 35:* The requirement for holders of the non-commercial permit to report all catch, regardless of whether it is caught within Federal or State waters, exceeds the jurisdiction of the Federal Government.

*Response:* Hawaiian bottomfish stocks and habitat are shared between State and Federal jurisdictions. As such, in response to the demonstrated conservation and management need to end overfishing of Hawaiian bottomfish stocks, it is essential that comprehensive information about the fishery be collected to effectively implement this rule.

*Comment 36:* The wording of the regulations makes it sound as if the State CML can permit non-commercial

fishing. This language needs clarification.

*Response:* Holding a State CML satisfies the permitting requirements for non-commercial bottomfish fishing in Federal waters. However, commercial fishing in Federal or State waters requires a State CML. With regard to reporting, if the vessel operator holds a non-commercial permit, the operator must report the entire catch and effort for the fishing day to NMFS. If the vessel operator holds a State CML, the operator must report the entire catch and effort for the fishing day to the State. The compliance guide and Federal non-commercial logbook instructions will provide further direction to assist fishermen with these reporting requirements.

*Comment 37:* Section 665.72(e) needs to be clarified by removing the word "commercially" because the closure applied to both commercial and non-commercial fishing.

*Response:* The final rule clarifies that when the fishery is closed, Deep 7 bottomfish may not be harvested or sold, except as otherwise authorized by law.

*Comment 38:* Explain why the rule requires reporting of all catch by holders of the non-commercial bottomfish permit, but the permit is only required for those that fish for BMUS.

*Response:* The requirement to report all catch from bottomfish trips will provide a complete profile of the non-commercial bottomfish fishery, its interplay with related fisheries (e.g., troll and handline fishing for tunas and related species), and the biological, social, and economic effects of fishermen switching among gear types and target species.

*Comment 39:* Explain why it would be unlawful to fail to report relative to § 665.3.

*Response:* Holding either a Federal non-commercial permit or State CML satisfies the permit requirements of this final rule. Section 665.3 reinforces the existing requirement for State CML holders to report their catch and effort to the State, as required by applicable State law or regulation.

*Comment 40:* This final rule unfairly targets the bottomfish fishermen. The activities of divers, shore-casters and kayakers should also be regulated.

*Response:* The final rule applies only to vessel-based bottomfish fishing in U.S. EEZ waters (3–200 nm offshore) with the objective to reduce bottomfish overfishing in the Hawaiian Archipelago. Divers, shore-casters and kayakers fish primarily in State waters (0–3 nm) and, as such, they are subject to State of Hawaii regulations including

the BRFA's, gear restrictions, recreational bag limits, and commercial permits and reporting, as appropriate.

*Comment 41:* Stock assessments should be based on scientific information.

*Response:* Fishery scientists have conducted stock assessments using a combination of the State of Hawaii commercial fishing database and fishery-independent information. The most recent stock assessment indicated that the current level of bottomfish fishing effort in the main Hawaiian Islands is not sustainable in the long term, and must be reduced by 24 percent in 2008. State and PIFSC scientists will continue to monitor the bottomfish fishery through commercial information reported by State CML holders. Also, NMFS independent research and information reported by non-commercial bottomfish permit holders will be used by the Council and NMFS to set the annual bottomfish TAC. Bottomfish stock assessments and TAC are based on the best scientific information available.

*Comment 42:* The proposed regulations are redundant to existing State of Hawaii requirements, adding unnecessary costs and paperwork burdens.

*Response:* Current State of Hawaii CML and data reporting only apply to commercial fishing. This final rule is intended to obtain information on the non-commercial bottomfish fishery in Hawaii. The Federal permit requirement is satisfied with a State CML, so the permit requirement is not redundant. A fee is required for a non-commercial permit and the fee amount is limited to the administrative cost to process the permit application. If the vessel operator holds a non-commercial permit, the operator must report the entire catch and effort for the fishing day to NMFS. If the vessel operator holds a State CML, the operator must report the entire catch and effort for the fishing day to the State. Thus, there is no redundant reporting requirement. Vessels that are marked according to State requirements are exempt from Federal vessel identification requirements, so there is no redundancy in the vessel identification requirements. The Federal non-commercial bag limit of five fish is consistent with existing State requirements.

*Comment 43:* Regarding the Federal non-commercial bag limits, it would be difficult to determine how many fish are caught in State waters and how many are caught in Federal waters; the rule is unclear whether both bag limits would apply, i.e., five State and five Federal.

*Response:* The holder of a Federal non-commercial bottomfish permit is limited to five Deep 7 fish, regardless of where the fish are caught. The State of Hawaii recreational bag limit of five fish applies to other non-commercial fishermen. Thus, a limit of five bottomfish applies to all non-commercial fishing.

*Comment 44:* Relatively few dedicated commercial fishermen catch the majority of bottomfish, so by not limiting commercial bottomfish fishermen to a specific amount of fish is counter-productive to ending overfishing of bottomfish in the MHI.

*Response:* The final rule limits catches by commercial fishermen through an annual TAC. When the TAC is reached in any given year, both commercial and non-commercial fisheries for Deep 7 bottomfish are closed for the remainder of the fishing year.

*Comment 45:* A comprehensive review of alternative measures to maintain an adequate level of bottomfish stock needs to be done before changes are made to the regulations.

*Response:* The Council, in its FSEIS, analyzed the potential impacts of a range of management alternatives related to ending overfishing in the MHI. The preferred alternative was chosen because it reduces fishing effort by the required amount to end overfishing, provides a mechanism for data collection from the non-commercial sector, and allows for the establishment of a total allowable catch limit that can be adjusted each year based on stock assessments. Copies the FSEIS are available from the Council (see ADDRESSES).

#### Changes from the Proposed Rule

In this final rule, several changes were made from the proposed rule to provide clarification of the requirements. The proposed rule would have established an expiration date of August 31 for Main Hawaiian Islands non-commercial bottomfish permits. NMFS notes that there is no administrative or management necessity or advantage to setting a specific permit expiration date. NMFS estimates that it will process up to 5,000 applications per year, and a specific expiration date would disproportionately concentrate administrative burdens to certain times of the year, potentially causing significant and unacceptable delays in the processing of permits. Authorizing permits to be valid for one year from the date of issuance will allow for operational efficiency on a long-term basis. The final rule clarifies that

permits are valid for the time specified on the permit, i.e., one year from the date of issuance, and also clarifies that, while 15 CFR 904 relates to permit revocation and suspension, such revocations and suspensions may also occur as other types of administrative actions.

The requirements for the new Main Hawaiian Islands non-commercial permit include provisions regarding catch reporting, bag limits, etc. The proposed rule was unclear about "mixed" fishing trips, where some fishermen on the trip hold Federal Main Hawaiian Islands non-commercial permits, and some hold State of Hawaii Commercial Marine Licenses. The State of Hawaii defines these mixed trips to be non-commercial. To be consistent with State rules, the final rule clarifies that, if any participant on the trip is non-commercial, then the entire trip is non-commercial, and participants are subject to non-commercial requirements, including reporting and bag limits.

The proposed rule would require all non-commercial fishermen on a fishing trip to have either a Main Hawaiian Islands non-commercial permit or a State CML, ostensibly including charter boat patrons. The State of Hawaii requires any person providing vessel charter services in the State for the taking of marine life in or outside of the State to obtain a State CML. The charter operator does not need to sell any fish—merely offering the charter service triggers the requirement. Licensed charter vessel operators are also required to submit State commercial fishing reports in which all the effort and catch on the trips are to be reported, including catch by patrons. Only two percent of charter fishing vessels statewide use some bottomfish fishing gear; charter fishing is primarily pelagic fishing. The few vessels that occasionally offer charter bottomfish fishing usually target inshore reef slope or shallow bottomfish species, not the Deep 7 species. Additionally, most studies indicate that the majority of charter patrons are out-of-state visitors, and not residents, and it would be difficult for most visitors to apply for and obtain a Federal permit during the short time of their visit. The final rule will clarify that customers on bottomfish charter fishing trips are exempt from the non-commercial bottomfish permit requirement where the charter vessel operator is compliant with state laws and regulations. Additionally, since charter boat customers are considered to be non-commercial fishermen, and non-commercial fishermen are subject to bag

limits under State requirements, this final rule requires Deep 7 bottomfish charter boat customers to comply with bag limits when fishing for Deep 7.

The proposed rule would require operators of vessels registered for use under Main Hawaiian Islands non-commercial bottomfish permits to report the catch, effort, and other data from each fishing trip to NMFS. Additionally, the State of Hawaii requires State CML holders to report their catch and effort to the State. On mixed trips, where some fishermen on the trip hold Federal non-commercial permits, and some hold State CMLs, there is a potential for double-reporting of the catch because both permit holders are required to report but to different agencies. No change will be made to the final rule, but the compliance guide and the Federal non-commercial logsheet instructions will clarify that non-commercial vessel operators need to report only the catch made by holders of Main Hawaiian Islands non-commercial bottomfish permits, and not that of the holders of State CMLs.

The implementation of the new Main Hawaiian Islands non-commercial permit creates a link to the Federal vessel identification requirement in § 665.16 that requires Federal permit holders to mark their vessels in a specific way for aerial and at-sea identification purposes. The existing Federal vessel identification requirements were created for the larger commercial fishing vessel to assist in aerial and at-sea enforcement of fishing regulations. Current State-registered bottomfish vessels are marked with an official HA number, with the addition of the letters "BF," but the typical Hawaii-based non-commercial bottomfish vessel is not large enough to have the superstructure or deckhouse to support Federal vessel identification markings. Also, the bottomfish closed season and other restrictions for bottomfish are specific to Deep 7 species, not all bottomfish fishing. Enforcement of and compliance with this final rule are best addressed dockside, not at sea or from the air, so large lettering of the vessel's official number is not essential. Furthermore, imposing on the public a duplicative Federal vessel marking (collection-of-information) requirement with existing State's requirement is inconsistent with the purpose of the Paperwork Reduction Act. The final rule will clarify that those non-commercial bottomfish vessels that are in compliance with state bottomfish vessel registration and marking requirements are exempt from the Federal vessel identification requirements.

The Magunson Act authorizes NMFS to collect fees for all permits. The preamble to the proposed rule noted that fees would be collected for Main Hawaiian Islands non-commercial bottomfish permits, but the regulatory text was not included. The final rule clarifies that fees will be charged for Main Hawaiian Islands non-commercial bottomfish permits, and that the fees are non-refundable and are collected to offset the administrative costs associated with issuing the permits.

The proposed rule would have established a prohibition against owning a fishing vessel that participates in non-commercial bottomfish fishing without a Main Hawaiian Islands non-commercial bottomfish permit or State CML. The proposed rule neglected, however, to create the related requirement, so the final rule creates the requirement.

The final rule adds the definition of State of Hawaii Commercial Marine License, which was omitted in the proposed rule, and revises the definition of Main Hawaiian Islands Non-Commercial Bottomfish Fishing Permit to clarify that the permit is required to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any BMUS in the Main Hawaiian Islands Management Subarea.

The final rule clarifies that both the vessel owner and vessel operator share responsibility for submitting required logbook information for each day of the fishing trip.

The final rule also clarifies the procedures used by the Regional Administrator (RA) in notifying the public of the projected closure date for the fishery. The RA will file an official notice of the closure with the Office of the federal Register at least 14 days in advance of the projected closure date.

The final rule also clarifies that, in addition to the prohibition on fishing for Deep 7 bottomfish after the TAC is reached, Deep 7 bottomfish species may not be sold or offered for sale after the TAC is reached unless otherwise legally harvested.

The final rule also reorders the numbering of new §§ 665.73 (bag limits) and 665.74 (closed season). Because the closed season will be effective only in 2008 and repealed afterward, renumbering the sections now will preclude the need to renumber them later.

#### **Classification**

The NOAA Assistant Administrator for Fisheries (AA) determined that Amendment 14 is necessary for the conservation and management of the

affected fisheries, and that the amendment is consistent with the Magnuson-Stevens Act and other applicable laws.

A final environmental impact statement dated December 19, 2007, was prepared for this final rule. The FSEIS was filed with the Environmental Protection Agency on January 4, 2008. A notice of availability was published on January 11, 2008 (73 FR 2027). In approving Amendment 14 on March 18, 2008, NMFS issued a Record of Decision (ROD) identifying the selected alternative. A copy of the ROD is available from William L. Robinson (see **ADDRESSES**).

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

Consistent with section 604 of the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA) for Amendment 14, as follows:

This FRFA incorporates the IRFA prepared for Amendment 14. The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A statement of the need for, and objectives of, the rule is provided in the preambles to the proposed rule and to this final rule, and is not repeated here.

There were two comments on the IRFA, and NMFS responds as follows:

*Comment 1:* The statement that "There are no reporting, recordkeeping, or other compliance requirements for commercial vessels in the proposed rule" seems out of place, given that all vessels must report their catch toward the TAC.

*Response:* The keyword in that phrase is "commercial". This rule does not create new requirements for commercial vessels or operators. Under current State of Hawaii regulations, all commercial fishermen are required to have a State CML and report their catch to the State, and are subject to vessel-marking requirements. In monitoring and calculating the TAC, the commercial information collected by the State will be incorporated with the non-commercial data collected under the requirements in this rule.

*Comment 2:* The statement that vessels in the bottomfish fishery "are not independently-owned and operated" is inaccurate, as many individuals own boats and fish from their own boats.

*Response:* The proposed rule contained a typographic error. The full sentence should have read "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 independently-owned and operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$4 million."

#### Steps Taken to Minimize Impacts

The Magnuson-Stevens Act requirements to prevent overfishing preclude allowing a TAC to be set above a level of overfishing in

order to minimize impacts to small entities. 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 2008–09 TAC is specified.

Additionally, by the time the TAC is specified, NMFS should have information on the State of Hawaii's intentions regarding possible changes to the State bag limit requirements. Since the universe of affected entities does not include non-commercial fishermen, economic impacts to this group are not considered under this FRFA. However, those impacts were analyzed by the Council as part of the Regulatory Impact Review to assess regional and national economic impacts.

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

Approximately 380 vessels were 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 million 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 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. Furthermore, there are no disproportionate economic impacts among vessels based on geographic location, gear, or vessel size resulting from publication of this final rule.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all vessels that have historic landings in this fishery. In addition, copies of this final rule and guide are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site: [fpir.nmfs.noaa.gov](http://fpir.nmfs.noaa.gov).

This final rule contains collection-of-information requirements subject to the PRA. These requirements have not yet been approved, but OMB approval is

expected in the near future. NMFS will publish a notice when these requirements are cleared by OMB and are, therefore, effective. The public reporting burden for these requirements is estimated to be 30 minutes for a new permit application, and 20 minutes for completing a fishing logbook each day.

NMFS estimates that 800–5,000 non-commercial fishermen will request permits. Thus, the collection of information burden estimate for permit applications is 400–2,500 hours per year. Estimating that between 800–1,800 vessels would make 10–50 trips per year, 8,000–90,000 logbooks could be generated each year. Thus, the total collection of information burden estimate for fishing data reporting would be between 2,664 to 29,970 hours per year.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson, NMFS PIR (see **ADDRESSES**), or by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or 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.

A consultation under section 7 of the Endangered Species Act was conducted for Amendment 14. In a biological opinion dated March 18, 2008, the Regional Administrator determined that fishing activities conducted under Amendment 14 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date to implement these measures in a timely manner. The Council and NMFS completed FMP Amendment 14 and the FSEIS in December 2007, and the proposed rule was published in February 2008. Public comments on the proposed rule were accepted until March 7, and by the time this final rule was prepared, monitoring of Hawaii bottomfish landings since the beginning of the 2007–08 fishing year (i.e., October 2007) indicates that the proposed TAC of 178,000 lb will be reached on or prior to April 17, according to NMFS scientists. This is a result of higher than anticipated landings of Hawaii bottomfish during the months of February and March 2008. This necessitates closure of the fishery before the scheduled May 1



beginning of the 2008 closed season. If the fishery is not closed soon, the recommended 2007–08 TAC would likely be further exceeded, and overfishing of Hawaii bottomfish would continue, and an even lower quota would be required to reduce fishing mortality for fishing year 2008–09 to adequately end the overfishing, resulting in greater negative impacts on the fishery. Therefore, the rule must be effective upon the date of filing with the Office of the Federal Register.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: March 31, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is 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”, “Non-commercial fishing”, and “State of Hawaii Commercial Marine License” 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 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.

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

\* \* \* \* \*

State of Hawaii Commercial Marine License means the license required by the State of Hawaii for anyone to take marine life for commercial purposes (also known as the commercial fishing license).

\* \* \* \* \*

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

\* \* \* \* \*

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

§ 665.13 Permits and fees.

(f) \* \* \*

(2) PIRO will charge a non-refundable processing fee for each application (including transfers and renewals) for the following permits. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, for determining the administrative costs of each special product or service incurred in processing the permit. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude the issuance, transfer or renewal of any of these permits:

- (i) Hawaii longline limited access permit;
(ii) Mau Zone limited access permit;
(iii) Coral reef ecosystem special permit;
(iv) American Samoa longline limited access permit; and

(v) Main Hawaiian Islands non-commercial bottomfish permit.

\* \* \* \* \*

(g) Expiration. Permits issued under subparts C, D, E, F, and G of this part are valid for the period specified on the permit unless revoked, suspended, transferred, or modified.

\* \* \* \* \*

5. In § 665.14, revise paragraphs (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)(1), 665.61(a)(3), or 665.81 the vessel operator must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (iii) of this section.

(ii) If fishing was authorized under a permit pursuant to § 665.61(a)(4) the vessel operator or vessel owner must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip.

(iii) 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.

(iv) 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 § 665.16, revise paragraph (a) and add new paragraph (e) to read as follows:

**§ 665.16 Vessel identification.**

(a) Each fishing vessel subject to this subpart, except those identified in paragraph (e) of this section, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

\* \* \* \* \*

(e) The following fishing vessels are exempt from the vessel identification requirements in this section:

(1) A vessel registered for use under a Main Hawaiian Islands non-commercial bottomfish permit that is in compliance with State of Hawaii bottomfish vessel registration and marking requirements.

(2) [Reserved]

■ 7. In § 665.61, revise paragraph (a) to read as follows:

**§ 665.61 Permits.**

(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 omalu 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 (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 omalu 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.* The owner of a vessel that is used for and 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 Main Hawaiian Islands 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 a Main Hawaiian Islands 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.

\* \* \* \* \*

■ 8. 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 665.74.

(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 665.74.

(n) Harvest, possess, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in § 665.71 from a vessel in the Main Hawaiian Islands Management Subarea, while holding a Main Hawaiian Islands non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of § 665.73.

■ 9. 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>

■ 10. 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 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), no person may sell or offer

for sale Hawaii Restricted Bottomfish Species as specified in § 665.71, except as otherwise authorized by law.

(f) 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 this section.

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

■ 11. Under subpart E, add a new § 665.73 to read as follows:

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

No more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species as specified in § 665.71, may be harvested, possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the Main Hawaiian Islands Management Subarea. Charter boat customers are also subject to the bag limit.

■ 12. In subpart E, add a new § 665.74 to read as follows:

**§ 665.74 Closed season.**

(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'omalulu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from paragraphs (a) and (b).

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