

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the insecticide bifenthrin, including its metabolites and degradates, in connection with use of the pesticide under a Section 18 emergency exemption granted by EPA. Compliance with the tolerance levels specified below is to be determined by measuring only bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate. These tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Apple .....	0.5	12/31/2015
Nectarine .....	0.5	12/31/2015
Peach .....	0.5	12/31/2015

(c) *Tolerances with regional registrations.* Tolerances with regional registrations are established for residues of the insecticide bifenthrin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate.

Commodity	Parts per million
Grass, forage .....	4.0
Grass, hay .....	15

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

[Docket No. 120628195-2414-02]

RIN 0648-XC089

**Main Hawaiian Islands Deep 7 Bottomfish Annual Catch Limits and Accountability Measures for 2012-13**

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

**ACTION:** Final specifications.

**SUMMARY:** In this rule, NMFS specifies a quota of 325,000 lb of Deep 7 bottomfish in the main Hawaiian Islands for the 2012-13 fishing year, based on an annual catch limit of 346,000 lb. The action supports the long-term sustainability of Hawaii bottomfish.

**DATES:** The final specifications are effective October 15, 2012 through August 31, 2013, unless NMFS publishes a document in the **Federal Register** superseding these specifications.

**ADDRESSES:** Copies of the Fishery Ecosystem Plan for the Hawaiian Archipelago 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, or [www.wpcouncil.org](http://www.wpcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808-944-2108.

**SUPPLEMENTARY INFORMATION:** On August 2, 2012, NMFS published proposed specifications that are finalized here, and a request for public comments (77 FR 46014). Additional background information on this action is found in the preamble to the proposed specifications, and is not repeated here.

Through this action, NMFS is specifying a quota (annual catch target, ACT) of 325,000 lb of Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2012-13 fishing year, based on an annual catch limit (ACL) of 346,000 lb. The MHI Management Subarea is the portion of U.S. Exclusive Economic Zone around the Hawaiian Archipelago lying to the east of 161° 20' W. longitude. 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 (*Epinephelus quernus*). The Council recommended the quota and ACL based on the best available scientific, commercial, and other information, taking into account the associated risk of overfishing.

The MHI bottomfish fishing year starts September 1, 2012. NMFS will monitor the fishery, and if the is quota is projected to be reached before August 31, 2013, NMFS will close the non-commercial and commercial fisheries for Deep 7 bottomfish in Federal waters through August 31, 2013. During a fishery closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish in the MHI, except as otherwise authorized by law (specifically, vessels with valid Pacific

Remote Island Areas bottomfish fishing permits are not affected by the closure). There is no prohibition on fishing for or selling other non-Deep 7 bottomfish species throughout the year. All other management measures continue to apply in the MHI bottomfish fishery.

**Comments and Responses**

The comment period for the proposed specifications ended on August 17, 2012. NMFS received comments and responds as follows:

*Comment 1:* The annual catch limit is a management tool that will ensure fish stocks for future generations to come.

*Response:* NMFS agrees. Federal law requires NMFS and the Council to manage fisheries using annual catch limits. NMFS and the Council developed the annual catch limit using the best available scientific and commercial information and in consideration of scientific uncertainty and social and economic factors. The use of an annual catch limit, annual catch target and accountability measure will help prevent overfishing and ensure sustainable, long-term catches for fishermen.

*Comment 2:* The combination of measures to prevent overfishing by the Federal government (through ACL and AM), and by the State of Hawaii (through spatial restrictions, or bottomfish restricted fishing areas) are duplicative, disadvantaging certain fishing communities, and NMFS should remove the bottomfish restricted fishing areas, or at least those in Federal waters.

*Response:* While the State and Federal bottomfish regulations may appear to be duplicative, they are not. In 1998, the State of Hawaii established by administrative rule the bottomfish restricted fishing areas. At that time, in the absence of Federal regulations these areas were intended specifically to prevent overfishing. Some of the restricted areas were located in Federal waters. The Council and NMFS recognized that the administration and enforcement of these areas were and continue to be, the responsibility of the State, and any change to the management of the bottomfish restricted fishing areas is the purview of the State.

The Council subsequently (in 2008) developed, and NMFS implemented, the first Hawaii bottomfish quota system. The Federal quota measures complement, but do not duplicate, State restricted area measures. The combined State and Federal bottomfish management programs include a mix of minimum fish sizes, non-commercial bag limits, restricted fishing areas, catch limits, gear restrictions, permits and

logbooks reporting, and other measures, none of which duplicates the others.

The Council may review its management program, as recommended to and implemented by NMFS, to gauge the overall effectiveness in achieving the objectives of the Hawaii fishery ecosystem plan, including whether or not the two programs working in concert are preventing overfishing and achieving optimum yield on a continuing basis. Mindful that the Magnuson-Stevens Act requires that all federally-managed U.S. fisheries be governed under a system of annual catch limits, if the Council finds that other parts of its Federal management program are superfluous in light of existing State measures, or that Federal programs are disadvantaging fishermen, it may recommend changes to the Federal requirements. Any changes to the Federal program would be coordinated with the State of Hawaii.

*Comment 3:* NMFS must consider the State's bottomfish restricted fishing areas and affiliated bottomfish resources when conducting bottomfish stock assessments and specifying annual catch limits.

*Response:* NMFS agrees, but information is not currently available about the conservation effects of the State's bottomfish restricted areas. The analyses in the most recent (2010) MHI Deep 7 bottomfish stock assessment, on which the annual catch limit and catch target are based, do not consider the impacts of the restricted areas. Rather, the assessment treats the main Hawaiian Islands as a single fishing area with no spatial restrictions. Until the State and NMFS can quantify the benefits of the bottomfish restricted fishing areas, stock assessments will likely continue to treat the main Hawaiian Islands as a single fishing area with no spatial restrictions. NMFS and the Council will continue to work with the State to obtain accurate information needed for stock assessments, including data on bottomfish distribution, relative abundance, stock structure, size and age

composition, and other biological characteristics, both within and outside the bottomfish restricted fishing areas.

*Comment 4:* Bottomfish camera bait stations ("BotCam") may not provide a true picture of the bottomfish stock because, while bottomfish may be attracted initially to the BotCam, once predators such as amberjacks and sharks arrive, bottomfish leave the area.

*Response:* A wide range of survey and sampling methods provide scientists and managers with multiple sources of information on which to base stock assessments. NMFS developed the BotCam as a cost-effective and non-fishing method to assess and monitor bottomfish (and other commercially important deepwater species). NMFS recognizes that this technology has both advantages and shortcomings compared to other data collection methods, and because BotCam surveys are still being conducted, NMFS has not fully evaluated the data obtained from these surveys for use in bottomfish stock assessments.

*Comment 5:* The most accurate way to get a true picture of the bottomfish stock is to open the bottomfish restricted fishing areas, and analyze the fish catch reports.

*Response:* The State of Hawaii, which governs and administers the bottomfish restricted fishing areas, has begun fishery-dependent studies in some bottomfish restricted fishing areas that may provide information, as suggested by the commenter.

*Comment 6:* Another option to help perpetuate the various Deep 7 bottomfish species is to increase the weight minimum for legal sale.

*Response:* Generally, minimum sizes (length or weight) are set at the level associated with the onset of maturity and are intended to provide individual fish with an opportunity to reproduce before being caught and kept. Current Federal regulations do not contain minimum sizes for sale of Deep 7 bottomfish. However, the State has implemented a minimum sales weight

of one pound for onaga (*Etelis carbunculus*) and opakapaka (*Pristipomoides filamentosus*); changes to these limits would be the purview of the State. NMFS will continue to work with the Council to review available scientific information and evaluate whether additional conservation and management measures, including size limits, are needed to meet the objectives of the plan.

### Changes From the Proposed Specifications

There are no changes in the final specifications.

### Classification

The Regional Administrator, NMFS PIR, determined that this action is necessary for the conservation and management of MHI 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 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 none was prepared.

This action is exempt from review under Executive Order 12866.

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

Dated: September 11, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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