WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL

Measure to Establish Eligibility Criteria for New Entry into the Northwestern Hawaiian Islands Mau Zone Limited Access System

Including an Environmental Assessment and Draft Regulatory Impact Review

A Regulatory Adjustment to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region

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Abbreviations and Acronyms

BMUS	Bottomfish Management Unit Species
CDP	Community Development Program
CPUE	Catch Per Unit Effort
DEIS	Draft Environmental Impact Statement
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
ESA	Endangered Species Act
FMP	Fishery Management Plan for the Bottomfish and Seamount Groundfish Fishery of the Western Pacific Region
HDAR	State of Hawaii Division of Aquatic Resources
HPC	Habitat of Particular Concern
MHI	Main Hawaiian Islands
MSA	Magnuson Fishery Conservation and Management Act
MSY	Maximum Sustainable Yield
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NWHI	Northwestern Hawaiian Islands
RIR	Regulatory Impact Review
RFA	Regulatory Flexibility Act

1.0 INTRODUCTORY MATERIAL

1.1 Summary

Amendment 5 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fishery of the Western Pacific Region (FMP) established a limited access permit program for the Mau Zone, a management area in the Northwestern Hawaiian Islands (NWHI). This permit program went into effect on May 28, 1999 (64 FR 22810). Initial permit eligibility was based on a weighted point system that favored past participation in the fishery. Based on the economic and biological characteristics of the fishery, the Council identified a long-term target level of ten permitted vessels for the fishery. The Council also decided to reserve one-fifth of the target number of permits (two) for a community development program, should it become established (as of December 2001 no program had yet been established). The limited access system included a "use it or lose it" provision (50 CFR 660.61(g)) that required a specified minimum level of activity in the fishery (based on landings) in order to qualify for annual permit renewal. It was anticipated that there would initially be excess capacity (more than ten vessels) due to more than ten participants being eligible for permits, but that the number of participants would decrease over time through the "use it or lose it" provision. However, only ten vessels qualified for limited access permits in 2000, the first full year that the program operated. Because participation fell below the target level in 2001, the Council is now establishing a mechanism to allow for new entry should the need arise. Establishment of a mechanism for new entry falls within the framework of management measures identified in Amendment 5.

The objective of this regulatory adjustment is to establish an equitable mechanism to achieve and maintain the long-term target level for participation in the Mau Zone limited access fishery. This regulatory adjustment supports several objectives of the FMP. First, it helps to balance long-term productivity of bottomfish stocks with continued fishing opportunities for small-scale commercial fishermen. Next, it contributes to continued delivery of high quality fishery products to consumers. Establishment of eligibility criteria for new entry into the Mau Zone also ensures consistency between the existing management regime in the Hoomalu Zone (a limited access bottomfish fishery management area west of the Mau Zone) and the Mau Zone. It also preserves the long term option of combining the Mau and Hoomalu Zones in order to simplify management.

The Council's Bottomfish Task Force, Advisory Panel, and Plan Team developed four alternative measures that would provide a mechanism to maintain participation at the target level by allowing new entrants when participation levels fall below the target of ten vessels. These are a weighted point system for new entry, limited transferability of permits at the target level, full transferability of permits at the target level, and a lottery administered by the National Marine Fisheries Service that would distribute available permits. The Council chose the weighted point system as its preferred alternative at the 107th Council meeting held from November 28 to December 1, 2000. Under this alternative, all of the existing provisions of the limited access permit program, including non-transferable permits and the "use it or lose it" requirement, would

be maintained. If the number of permit holders falls below the target level, the following criteria would be used to identify new participants. Fishermen would receive points for landings made from the main Hawaiian Islands (MHI) or from the NWHI, but not both. For landings made from the MHI, fishermen would receive one point for each year during which they landed at least 2,500 lbs of bottomfish management unit species (BMUS). For landings made from the NWHI, fishermen would receive points based on the number of years during which they had made at least five trips and landed at least 500 lbs of BMUS during each trip. They would receive two points for each such year, up to a maximum of five years, or ten points, and they would receive one point for each additional qualifying year above five years or ten points. Using this weighted point system, applicants would be ranked by score in descending order and available permits would be awarded successively starting with the top-ranked applicant. The number of available new permits each year would equal the long-term target level for participation (ten) minus the number of permit renewals issued following the procedures established in Amendment 5. For the purposes of these eligibility criteria, landings are defined as BMUS lawfully caught in state or federal waters of the MHI or NWHI and subsequently landed and properly reported on State of Hawaii landing reports.

Amendment 5 also created a fee system for issuance of Mau Zone permits. A fee is charged for each application for a Mau Zone bottomfish fishery permit. The amount of the fee is calculated in accordance with procedures set forth in the National Oceanic and Atmospheric Administration Finance Handbook for determining the administrative costs incurred in issuing permits. The fee does not exceed such costs and is specified on each permit application form. Failure to pay the fee precludes the issuance of a Mau Zone permit. At this time, Hoomalu Zone permit recipients are not required to pay fees for their permits. This regulatory adjustment would establish a fee system for Hoomalu Zone Permits, as in the Mau Zone program, to cover administrative costs.

1.2 Table of Contents

1.0 INTRODUCTORY MATERIAL 2
1.1 Summary 2
1.2 Table of Contents 4
1.3 Introduction 5
1.3.1 Existing Regulations 5
1.3.2 Responsible Agencies 7
1.3.3 List of Preparers 7
1.3.4 Public review and comment 7

2.0 FISHERY MANAGEMENT MEASURES 9
2.1 Problems for Resolution 9
2.2 Management Objectives 10
2.3 Management Alternatives 10
2.4 Reasons for Choosing the Preferred Management Measure 12
2.5 Permit Fees for Hoomalu Zone 12

3.0 AFFECTED ENVIRONMENT 13
3.1 Biological Characteristics of the Fishery 13
3.2 Economic Characteristics of the Fishery 13
3.3 Social and Cultural Characteristics of the Fishery 18

4.0 ANALYSIS OF THE BENEFICIAL AND ADVERSE IMPACTS OF MANAGEMENT ALTERNATIVES 20
4.1 Ecological Impacts 20
4.2 Economic and Social Impacts 23

5.0 NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT 24

6.0 OTHER APPLICABLE LAWS 27
6.1 National Environmental Policy Act 27
6.1.1 Conclusions and Determination 27
6.2 Paperwork Reduction Act 28
6.3 Coastal Zone Management Act 28
6.4 Endangered Species Act 29
6.5 Marine Mammal Protection Act 29
6.6 Regulatory Impact Review and Regulatory Flexibility Act 29
6.7 Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve 31

7.0 BIBLIOGRAPHY 32

8.0 PROPOSED REGULATIONS 34

1.3 Introduction

1.3.1 Existing Regulations

The Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries in the Western Pacific Region became effective on August 27, 1986, as published at 51 FR 27413. The FMP prohibits certain destructive fishing techniques, including explosives, poisons, trawl nets and bottom-set gillnets, establishes a moratorium on the commercial harvest of seamount groundfish stocks at the Hancock Seamounts and implements a permit system for fishing for bottomfish in the Exclusive Economic Zone (EEZ) around the Northwestern Hawaiian Islands (NWHI). The plan also establishes a management framework that facilitates future adjustments, such as catch limits, size limits, area or seasonal closures, fishing effort limitation, fishing gear restrictions, access limitation, and permit and/or catch reporting requirements.

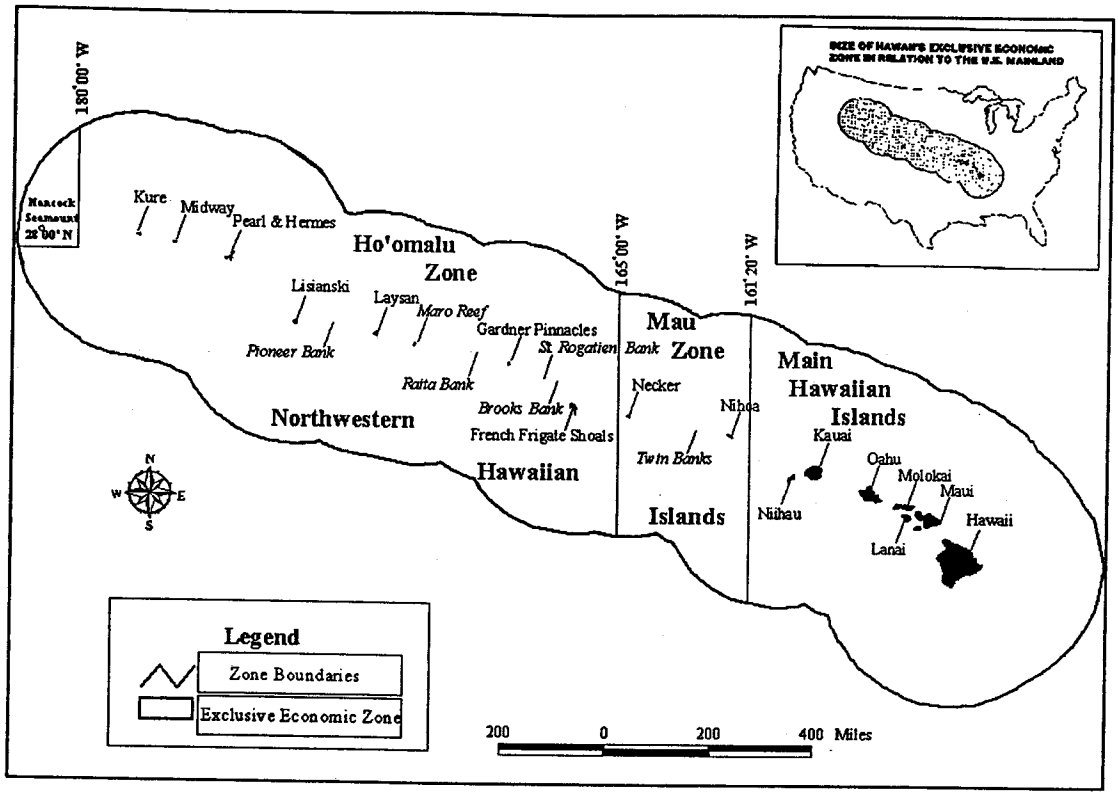
Amendment 1, implemented on November 11, 1987 (52 FR 38102), extends limited access permits as a management option to bottomfish fisheries in the EEZ surrounding American Samoa and Guam.

Amendment 2, implemented on September 6, 1988 (53 FR 29907), is intended to diminish the risk of biological overfishing and improve the economic health and stability of the bottomfish fishery in the NWHI. The amendment divides Federal waters in the NWHI into two management areas: the Hoomalu Zone and the Mau Zone (Figure 1 shows the location and boundaries of these two zones). It also implemented a limited access system for the Hoomalu Zone. Although it also established a Mau Zone permit, the number of permit holders was not restricted except that Hoomalu Zone permit holders could not also hold a Mau Zone permit. The Mau Zone was intended to serve as an area where fishermen could gain experience fishing in the NWHI, thereby enhancing their eligibility for subsequent entry into the Hoomalu Zone.

Amendment 3, implemented on January 16, 1991 (56 FR 2503), defines recruitment overfishing as a condition in which the ratio of the spawning stock biomass per recruit at the current level of fishing to the spawning stock biomass per recruit that would occur in the absence of fishing is equal to or less than 20 percent. Amendment 3 also delineates the process by which overfishing is monitored and evaluated.

Amendment 4, implemented on May 26, 1991 (56 FR 24351), requires vessel owners or operators to notify the NMFS at least 72 hours before leaving port if they intend to fish in a 50-mile study zone around the NWHI. This notification allows Federal observers to be placed on board bottomfish vessels to record interactions with protected species if this action is deemed necessary.

Figure 1. Map of Hawaiian archipelago and Mau and Hoomalu management zones.



Amendment 5, implemented on May 28, 1999 (64 FR 22810), establishes a limited access program in the NWHI Mau Zone fishery. A qualifying point system for the initial allocation of permits balances historic participation with current or recent fishing activity. Permit issuance requires that permit holders be an individual, partnership or corporation. These permit holders must retain at least 50 percent ownership in the permitted vessel or its replacement. A permit holder whose vessel is unseaworthy or who does not currently own a vessel may lease or charter a vessel for up to 12 months. Permits for the Mau Zone fishery are issued on an annual calendar basis. Participants must meet annual trip and landing criteria in order to qualify for a permit the following year. Permit recipients cannot transfer, lease, charter or sell their permit. The Amendment directs the Council to conduct an annual review of the Mau Zone limited access system in order to determine whether adequate attrition has taken place. The Council must also conduct a comprehensive review of the effectiveness of the limited access system five years after implementation. The Council also agreed to reserve one-fifth of the target number of permits for the community development program (CDP) when it becomes established. As of December 2001 the program had not yet been established.

Amendment 6, partially implemented on April 19, 1999 (64 FR 19067), added definitions of essential fish habitat and fishing sectors definitions as required by the Sustainable Fisheries Act of 1996.

1.3.2 Responsible Agencies

The Council was established by the Magnuson Fishery Conservation and Management Act (MSA) to develop management plans for fisheries operating in the U.S. EEZ around American Samoa, Guam, Hawaii, the Northern Mariana Islands and the U.S. possessions in the Pacific.[1] A fishery management plan/amendment is submitted to the Secretary of Commerce for review and approval. If the plan/amendment is approved, NMFS implements it through Federal regulations, which authorize the conduct of administration, monitoring and enforcement activities. For further information, contact:

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1.3.4 Public review and comment

This framework regulatory adjustment was developed with the assistance of the Bottomfish Plan Team, Advisory Panel and Mau Zone Task Force. A draft of this regulatory adjustment was distributed for comments to all holders of Federal permits for the Northwestern Hawaiian Islands bottomfish fishery and holders of State of Hawaii Commercial Marine Licenses that have recorded landings of bottomfish in the main Hawaiian Islands (MHI). Notice of the availability of a draft regulatory adjustment for public review and comment was published in the Federal Register on November 15, 2000. Public meetings and hearings regarding this regulatory adjustment are listed below.

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[1] Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Midway Island, Kingman Reef, Palmyra Island and Wake Island.

Date	Meeting (Location)/Distribution	Published Notice
28 April 2000	Joint Plan Team/Advisory Panel (*HNL)	**FR, ***HNA,
4 May 2000	Task force, mailing	
18 May 2000	74th SSC, public meeting (HNL)	FR, HNA,
15 June 2000	104th Council meeting (Maui) hearing	FR, HNA, Maui Tribune
29 November 2000	107th Council meeting (HNL) hearing	FR, HNA

* Honolulu
** Federal Register
*** Hawaii Newspaper Agency (Honolulu Advertiser and Honolulu Star Bulletin)

2.0 FISHERY MANAGEMENT MEASURES

2.1 Problems for Resolution

A limited access system for the Mau Zone was implemented in 1999, pursuant to Amendment 5 (described in Section 1.3.1). Because access had not previously been restricted, by that time more than 80 federal Mau Zone permits had been issued. However, only 37 permits were actually used. On an individual vessel basis total costs tended to exceed total revenue, but a large pool of potential fishers contributed to continued fishing effort coupled with high vessel turnover. During the 1990s only two fifths of the vessels stayed in the fishery for more than two years. As a result, managers wanted to limit effort so that the catch per unit effort (CPUE) and per-vessel revenues would increase (in 1997, prior to Amendment 5, managers implemented a two-year moratorium on new permits, capping the number of potential participants). Amendment 5 identified a target level of ten permits and a methodology to steadily reduce the number of outstanding permits to the target level. It established criteria[2], based on past participation in the fishery, to initially allocate permits, and managers expected 14-20 vessels to initially qualify. A "use it or lose it" provision was included to facilitate attrition and permits were also non-transferable to allow the target level to be attained. These permits are issued annually and the "use it or lose it" provision requires permit holders to make at least five trips to the Mau Zone and land at least 500 pounds of bottomfish management unit species (BMUS) on each of these trips in order to qualify for a permit in the next year.

The number of vessels fishing in the Mau Zone varied from four to twelve from 1989 through 1999. In 2000, the first full year that the limited access program was applied, the target level of ten vessels was attained instead of the expected 14-20. In 2001, the number of vessels participating in the fishery dropped down to 6. It is unclear whether all of these vessels will qualify for permits in 2002. In the past regular turnover supported higher aggregate participation. Because of the "use or lose it" provision, attrition has resulted in fewer than the optimal level of ten participants in the fishery (but note, as discussed below, that one fifth of the target number of permits, or two permits, are reserved for a community development program should it become established, leaving eight "general-use" permits). Amendment 5 anticipates this contingency: it directs the Council to review the limited entry program annually and "If the current number of fishery participants is less than the target number, the Council may develop opportunities for new vessels to enter the fishery" (pp. 2-3). This regulatory adjustment proposes such a mechanism

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[2] Point system for initial Mau Zone limited entry permits under Amendment 5 is as follows: Any vessel owner who is eligible for three or more points according to the following point system shall be awarded a permit under the limited access system:

- Was the owner of a vessel that was used to make at least one landing of bottomfish management unit species (BMUS) from the Mau Zone on or before December 17, 1991 - 1.5 points.
- Was the owner of a vessel that was used to make at least one landing of BMUS from the Mau Zone in 1996 - 3.0 points; 1995 - 2.5 points; 1994 - 2.0 points; 1993 - 1.5 points; 1992 - 1.0 point; 1991 - 0.5 point.

within the framework provisions of the FMP.

2.2 Management Objectives

The objective of this regulatory adjustment is to ensure that the Mau Zone limited access program allows an optimal number of vessels to participate in the fishery in a fair and equitable manner. This supports three of the eight FMP objectives:

- Objective 5: *Maintain existing opportunities for rewarding experiences by small-scale commercial, recreational, and subsistence fishermen, including native Pacific islanders*. Proposed management measures will allow new entrants to the small-scale commercial fishery in the Mau Zone.

- Objective 6: *Maintain consistent availability of high quality products to consumers*. Without a mechanism for new entry, attrition will further reduce fishery participation and landings.

- Objective 7: *Maintain a balance between harvest capacity and harvestable fishery stocks to prevent over-capitalization*. Since the ten vessel target level is calculated to prevent over-capitalization, maintenance of participation at ten vessels resulting from this adjustment will contribute to this objective.

Another important goal, related to National Standard 4, is to ensure fair and equitable allocation of fishing privileges among various fishers. This will be achieved by establishing clear and consistent criteria for awarding permits to new Mau Zone fishers.

2.3 Management Alternatives

In addition to the no-action alternative, the Council considered four alternatives for Mau Zone new entry criteria to maintain participation at the target level. Alternatives A and B provide mechanisms for scenarios in which participation is below the target level, while Alternatives C and D do not provide avenues for increased participation but rather assume that participation is at the target level and provide methods to maintain this level. Alternatives E is the no action alternative.

A) A weighted point system (the preferred alternative): This alternative would retain all the existing Mau Zone limited access provisions (see 50 CFR 660.61), including non-transferability and the "use it or lose it" requirement. New permit applicants would be ranked based on the total number of points for which they qualify. In any one year points would be assigned under one of the two methods below but not both. An owner of a vessel landing BMUS would be given points based on the following criteria:

1) Vessel owners would receive one point for each qualifying year during which they landed

at least 2,500 lbs of BMUS from the MHI.

2) Vessel owners would be awarded points for each qualifying year during which they made at least five trips to the NWHI and landed at least 500 lbs of BMUS during each trip. They would receive two points for each year up to a maximum of five years, or ten points. One point would be awarded for each additional qualifying year above the first five qualifying years.

This selection process would be used if less than the target level of vessels qualified for permits at the beginning of any year. The number of available permits in a given year would be the difference between the number of existing participants that re-qualify under the "use it or lose it" provision and are issued permits, and the current target of eight non-community development permits (non-CDP permits). If the proposed community development program is withdrawn (see Section 2.6.2.2.2 of Amendment 5), the two permits reserved for that program would be available to the pool of existing participants and new applicants, creating a new target of ten permits. Each applicant would be ranked in descending order based on their total points and, starting with the first-ranked applicant, available permits would be awarded successively based on rank.

B) Lottery: This alternative is similar to the weighted point system in that it would allocate permits that become available due to the "use it or lose it" provision or for other reasons, causing the number of outstanding non-CDP permits to fall below the current target of eight permits. Available permits would be assigned to applicants based on a NMFS-conducted lottery with no restrictions on applicant eligibility.

C) Limited transferability: This alternative would be appropriate for scenarios in which the number of participants is already at the target level. Under this alternative, a permit holder would be able to transfer his permit to anyone in a pool of "qualified fishers." The same weighted point system described above would be used to establish this pool. A minimum number of points would be required to qualify for the pool. This point minimum would be set so that only fishermen with some level of experience in MHI and/or NWHI fisheries would qualify. All main Hawaiian Island fishers and past NWHI limited access permit holders (including those that did not re-qualify under the "use it or lose it" provision) could apply and be ranked by the point system. The top point holders would receive limited transfer permits so the total number of permits in the Mau Zone would equal the target number. Once implemented, limited transfer permit holders could freely transfer permits to eligible pool members by sale, lease, loan or any other form of conveyance with the restriction that only one transfer could be made during any one calendar year (this would prevent a group of vessel owners from transferring permits round-robin fashion within a year, thereby increasing effective effort by concentrating individual vessel effort within segments of a given year).

D) Full transferability: This alternative is the same as limited transferability except that permits would be freely transferable to anyone, rather than just to those within a pool of qualified fishers. This alternative would also be appropriate for scenarios in which the number of participants is

already at the target level.

E) No action: The Council would not establish management measures to maintain the number of Mau Zone fishery participants at its target level.

2.4 Reasons for Choosing the Preferred Alternative

The preferred alternative was chosen because it best addresses the key objective of fairness and equity. Within the context of the Mau Zone fishery, fairness and equity recognize that past participation in the fishery should be balanced with the need to maintain a target level of participation and encourage maximum use of permits. The basic approach is to structure the permit system so that evidence of participation is used for initial qualification while commitment, or ongoing performance, is used to determine ongoing participation. Full transferability and lottery assignment are the two least desirable alternatives because they would both allow new entrants that have no past experience, and therefore no stake, in the fishery.

Transferability can provide benefits in that permits are expected to acquire a value roughly equivalent to the net present value of the expected profit stream from participation. The permit holder can capture this value through sale. This could be a more beneficial outcome than retaining the permit if his production costs are relatively high. The limited transferability alternative would be more equitable than the full transferability alternative and could provide the benefits just described. However, as discussed below, monetary net present value in the Mau Zone fishery is probably negative so it can be assumed that other values (hedonic value and short-term income) are paramount. As a result, it is unclear whether a transferable permit would accrue any monetary value. For this reason, a system that allocates permits based on an individual's stake in participation–rather than their expectation of monetary returns–is preferable. In addition, as discussed above, transferability needs to be implemented at the target level of permits. Developing a mechanism that can do this simply and equitably would be difficult.

Finally, the Council may consider as a long term goal the combining of the Mau and Hoomalu Zones in order to simplify management. At present this is not feasible because the two fisheries differ. Hoomalu Zone vessels are larger, have more fishing power and are more efficient. They would likely out-compete the smaller Mau Zone vessels in a combined zone, driving current Mau Zone fishers out of the fishery. However, it may be preferable that the management measures in the two zone parallel one another. If a transferable permit were implemented in the Mau Zone then a similar arrangement would need to be applied to the Hoomalu Zone before combining management. In addition, permit transferability and a lottery system for the Hoomalu Zone are both outside of the framework of measures discussed in Amendment 5.

2.5 Permit Fees for the Hoomalu Zone

A fee system for Hoomalu Zone permits will be established through this regulatory adjustment, making the Hoomalu and Mau Zones consistent in that regard. Similar to Mau Zone permits, a

fee will be charged for each Hoomalu Zone permit application. The amount of the fee will be set following the procedures in the NOAA Finance Handbook for determining the administrative costs incurred in issuing permits. The fee will not exceed such costs and will be specified on each application form. Failure to pay the fee will preclude the issuance of a Hoomalu Zone permit.

3.0 AFFECTED ENVIRONMENT

3.1 Biological Characteristics of the Fishery

Chapter 3 of the Draft Environmental Impact Statement (DEIS) for the Bottomfish FMP (WPRFMC 2001) details the affected environment for all FMP-managed bottomfish fisheries. Its contents in relation to the Mau Zone fishery are briefly summarized here. The management unit is defined as the bottomfish complex harvested in the Northwestern Hawaiian Islands. BMUS, and other commonly caught bottomfish species, are listed in Table 1.

Table 1. List of common and scientific names of all BMUS, and other bottomfish species frequently caught in the Mau Zone.

Common name	Scientific name
Bottomfish Management Unit Species	
Uku	*Aprion virescens*
Butaguchi	*Pseudocaranx dentex*
Hapuupuu	*Epinephelus quernus*
Opakapaka	*Pristipomoides filamentosus*
Onaga	*Etelis coruscans*
Ehu	*E. carbunculus*
Kalekale	*P. sieboldii*
Gindai	*P. zonatus*
Lehi	*Aphareus rutilans*
Yellowtail kalekale	*P. auricillia*
White ulua	*Caranx ignobilis*
Black ulua	*C. lugubris*
Kahala	*Seriola dumerili*
Taape	*Lutjanus kasmira*
Other Bottomfish Species	
Papa ulua	*Carangoides orthogrammus*
Omilu	*Caranx melampygus*
Hogo	*Pontinus macrocephalus*

Source: WPRFMC 1999.

The first six species listed in Table 1 account for the majority of BMUS landings from the Mau Zone. The condition of the stocks of these species can be described in terms of their spawning potential ratios (SPRs), which are defined as the ratio of the spawning stock biomass per recruit at the current level of fishing to the spawning stock biomass per recruit that would occur in the absence of fishing. Amendment 3 of the FMP defined recruitment overfishing as occurring when the SPR is less than 20 percent. SPRs of bottomfish species in the Mau Zone were last estimated for the years 1991 through 2000. In all ten of those years, the best estimates of SPR for the five species that were assessed (the first six BMUS listed in Table 1 except *butaguchi*) were all greater than 20 percent (WPRFMC 2001). The DEIS concluded that "in the NWHI bottomfish stocks are relatively healthy." "Calculations of SPR and percent immature fish in the catch indicate no localized depletion for any of the species managed in the NWHI" (WPRFMC 2001).

Bottomfish landings from the Hoomalu and Mau Zones and the MHI for the years 1989-2000 are summarized in Table 2. The maximum sustainable yield (MSY) for bottomfish in the Mau Zone (all species combined) was last estimated at about 131,000 pounds per year (Kobayashi 1997). As can be seen in Table 2, that estimate of MSY was exceeded in 1994 through 1996, but annual landings later declined, being 105,000 lbs to 49,000 lbs in 1997 to 2000, respectively.

Table 2. Commercial bottomfish landings and vessels in the NWHI and MHI, 1989-1998.

Year	Landings (1,000 lb)[1]				Active vessels in Mau Zone[2]
	Mau	Hoomalu	Total NWHI	MHI	
1989	118	184	303	1,006	4
1990	249	173	421	646	11
1991	103	283	387	548	12
1992	71	353	424	587	8
1993	98	287	385	348	6
1994	160	283	443	458	11
1995	166	202	369	440	9
1996	135	176	311	440	11
1997	105	241	346	513	9
1998	66	266	332	462	6
1999	54	269	323	459	6
2000	49	213	262	576	5
mean	127	245	372	545	9
s.d.	54	60	49	183	3

[1] Landings data for NWHI from NMFS and HDAR; data for MHI from HDAR; 1998 figures projected from partial data..
[2] Active vessels data from WPRFMC (2001).

Logbook and observer data indicate that between 8 and 23 percent of the bottomfish catch in the Hawaiian archipelago is discarded, mostly due to certain species being unpalatable or

unmarketable (Nitta 1999; WPRFMC 1998b). The most commonly discarded species are carangids (jacks), sharks, and miscellaneous reef fish (pufferfish, moray eels, etc.). Two BMUS that are often discarded are *kahala* and *butaguchi*. Observer data from 1990 through 1993 indicated 93 percent of the former and 47 percent of the latter being discarded (Nitta 1999).

The Sustainable Fisheries Act of 1996 requires that fishery management plans identify and describe essential fish habitat (EFH) for managed fisheries, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. Based upon the best available data, the Council designated the EFH for the adult life stage of the seamount groundfish complex as all waters and bottom habitat bounded by latitude 29°–35°N and longitude 171°E–179°W between 80–600 m depth. EFH for eggs, larvae and juveniles is the epipelagic zone (from 0 to about 200 m depth) of all waters bounded by latitude 29°–35°N and longitude 171°E–179°W. This EFH designation encompasses the Hancock Seamounts, part of the northern extent of the Hawaiian Ridge, located 1,500 nautical miles northwest of Honolulu. Table 3 shows the EFH designations for bottomfish and seamount groundfish management unit species as designated by the Council.

Based on the known distribution and habitat requirements of adult bottomfish, the Council designated all escarpments/slopes between 40 and 280 m depth as habitat of particular concern (HAPC). In addition, the Council designated the three known areas of juvenile *opakapaka* habitat (two off Oahu and one off Molokai) as HAPC. The Council designated EFH for shallow-water bottomfish species complex as 0 to 100 meters and deepwater bottomfish species complex from 100 to 400 meters (Table 3).

The bottomfish fishery primarily utilizes a hook and line method of fishing where a weighted handline is deployed and continuously monitored by an individual fisherman during deep water fishing activities. The weight and hooks are maintained near the substrate but not on the substrate because the target species occur from 1 to 20 meters off the bottom. Because of the nature of this type of fishing, it is likely that the risk of impact to EFH/HAPC and other benthic habitats is negligible. Risks to coral reef habitat are also negligible because most of the bottomfish fishing in the NWHI occurs at depths deeper than the portion of the photic zone where coral reefs and reef building organisms are normally found (10- 50 fathoms or 20-100 m).

The NWHI provide habitat for several threatened and endangered species. In 1988, NMFS designated critical habitat for the Hawaiian monk seal out from shore to 20 fathoms in ten areas of the NWHI. Although several marine mammal species occur in the NWHI, only the critically endangered Hawaiian monk seal (*Monachus schauinslandi*) is known to have any direct interactions with the bottomfish fishery. These seals breed exclusively in the Hawaiian islands, primarily at six major colonies, all of which are west of the Mau Zone. However, a few individuals occasionally breed at Necker and Nihoa islands in the Mau Zone (see Figure 1) and further east on the main Hawaiian Islands. Although little is known of the seal's population status prior to 1950, its range probably declined since humans first settled the islands. From the 1950s to the early 1990s seal populations declined precipitously, but appear to have stabilized since

then. Since 1990, there has been an apparent increase in the number of monk seal sightings and births in the main Hawaiian Islands (HMSRT 1999; Johanos 2000). Since the mid-1990s total monk seal numbers appear to have stabilized at about 1,300 to 1,400 individuals. The first-year survival of pups at French Frigate Shoals increased significantly in 1998 (Marine Mammal Commission 2000). Figure 2 illustrates historical trends in beach count data, a relative measure of population size, for each of the principle monk seal breeding areas in the NWHI.

Table 3. Essential Fish Habitat Designations for Bottomfish Management Unit Species

Species Complexes	EFH	HAPC
Bottomfish Complex ***Shallow water species (0-50 fm): Uku (Aprion virescens), Thicklip trevally (Pseudocaranx dentex), Lunartail grouper (Variola louti), Blacktip grouper (Epinephelus fasciatus), Ambon emperor (Lethrinus amboinensis), Redgill emperor (Lethrinus rubrioperculatus), Giant trevally (Caranx ignoblis), Black trevally (Caranx lugubris), Amberjack (Seriola dumerili), Taape (Lutjanus kasmira)*** ***Deep water species 50-200 fm): Ehu (Etelis carbunculus), Onaga (Etelis coruscans), Opakapaka (Pristipomoides filamentosus), Yellowtail Kalekale (P. auricilla), Yelloweye opakapaka (P. flavipinnis), Kalekale (P. sieboldii), Gindai (P. zonatus), Hapupuu (Epinephelus quernus), Lehi (Aphareus rutilans)***	Eggs and larvae: the water column extending from the shoreline to the outer limit of the EEZ down to a depth of 400 m (200 fathoms). Juvenile/adults: the water column and all bottom habitat extending from the shoreline to a depth of 400 m (200 fathoms)	All slopes and escarpments between 40-280 m (20 and 140 fathoms). Three known areas of juvenile opakapaka habitat: Two off Oahu and one off Molokai
Seamount Groundfish Complex ***Deep water species (50-200 fm): Armorhead (Pseudopentaceros richardsoni), Ratfish/butterfish (Hyperoglyphe japonica), Alfonsin (Beryx splendens)***	Eggs and larvae: the (epipelagic zone) water column down to a depth of 200 m (100 fathoms) of all EEZ waters bounded by latitude 29°-35° Juvenile/adults: all EEZ waters and bottom habitat bounded by latitude 29°-35° N and longitude 171° E-179° W between 200 and 600 m (100 and 300 fathoms	

The DEIS details the factors that biologists believe contributed to this population decline. These are human disturbance, reduced prey availability, shark predation, aggressive behavior towards pups by adult males, and entanglement in marine debris.

Five species of turtles, all of which are listed as either threatened or endangered under the Endangered Species Act occur in the Hawaiian archipelago: the leatherback (*Dermochelys*

coriacea), the olive ridley (*Lepidochelys olivacea*), the hawksbill (*Eretmochelys imbricata*), the loggerhead (*Caretta caretta*) and the green turtle (*Cheloina mydas*). Green turtles nest in the NWHI at French Frigate Shoals and then migrate to the main Hawaiian Islands. The other four species occur rarely in NWHI waters.

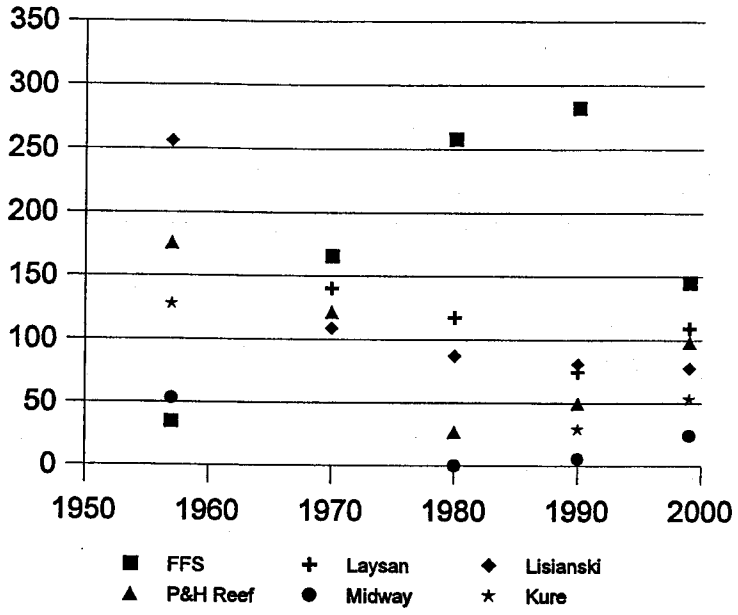

Figure 2. Hawaiian Monk Seal beach count time-series for the major NWHI breeding areas.

Dolphins and sharks have also been known to steal and/or damage hooked fish from bottomfish fishing gear. In the main Hawaiian Islands, fishers have occasionally reported loss or damaged fish rates of over 80% due to dolphins and/or sharks. For this reason, fishers in the MHI specifically avoid these areas where dolphins and/or sharks are known to steal or damage fish as they are being retrieved. In the NWHI, damaged or lost fish due to dolphins are reported to be less common than in the MHI. Fishers in the NWHI tend to retain bycatch, and have agreed to do so as a voluntary industry initiative, in order to minimize potential interaction with sharks, dolphins and monk seals.

Although there are several seabird colonies in the MHI, the NWHI colonies harbor more than 90% of the total Hawaiian Archipelago seabird population. The NWHI provide most of the nesting habitat for more than 14 million Pacific seabirds. More than 99% of the world's Laysan albatross (*Phoebastria immutabilis*) and 98% of the world's black-footed albatross (*P. nigripes*) return to the NWHI to reproduce. Of the 18 species of seabirds known to be present in the NWHI, only the short-tailed albatross (*P. albatrus*) is listed as endangered under the Endangered Species Act (ESA). The short-tailed albatross population is the smallest of any of the albatross species occurring in the North Pacific. Land-based sighting records indicate that 15 short-tailed albatrosses have visited the NWHI over the past 60 years. Five of these visits were between 1994

and 1999 (WPRFMC 2001). No sighting or interactions with bottomfish boats have been documented.

Aside from providing habitat and breeding areas for the endangered and protected species mentioned above, the NWHI are ecologically significant because of their extensive coral reefs. Hawaiian coral reefs (including those in the MHI) constitute 89 % of the total coral reef area in U.S. Pacific Islands. Hawaii's isolation results in an ecosystem with relatively low diversity but high endemism, with coral species diversity greater in the NWHI than in the MHI, peaking in the middle of the archipelago at French Frigate Shoals and Maro Reef. Fish biomass is also higher in comparison to the MHI. The DEIS notes that the most important factor in coral reef population dynamics is cyclical oceanographic events that affect productivity over a large area.

The DEIS for the FMP concludes that interactions between the NWHI bottomfish fishery and endangered cetaceans, Hawaiian monk seals, turtles and seabirds are infrequent and unlikely to harm individuals or populations. Competition between the bottomfish fishery and the Hawaiian monk seal for seal prey species appears to be minimal. Interactions between the NWHI bottomfish fishery and non-endangered marine mammals are infrequent and unlikely to harm individuals or populations.

3.2 Economic Characteristics of the Fishery

As with the rest of the NWHI, the Mau Zone fishery consists of both part-time and full-time commercial fishermen. As mentioned above, Mau Zone fishers tend to have smaller operations in comparison to the Hoomalu Zone, and vessels are owner-operated. Many Mau Zone vessels have historically conducted mixed fishing trips (bottomfish, troll and pelagic handline) focusing on the most productive fishing method at any given time. Traditionally, the bottomfish season in the Mau Zone generally extends from November to April.

Economic performance of Mau Zone vessels was generally poor during the 1990s. Analyses in Amendment 5 suggest that vessels were, on average, experiencing annual net losses of $7,827 per vessel prior to limited access. Sub-optimal effort levels and resulting aggregate negative net returns were sustained by turnover. (New entrants are presumably unaware of economic conditions prevailing in the fishery. As noted in Amendment 5, vessels displaced from overfished U.S. mainland fisheries have steadily arrived in Hawaii on a "look-see" basis.) In addition, even if aggregate economic returns are negative, there may be vessels that operate profitably on a financial basis and thus remain in the fishery. The Regulatory Impact Review/Regulatory Flexibility Analysis contained in Amendment 5 includes a benefit-cost analysis. It concluded that all scenarios result in negative net economic benefits in purely monetary terms but that the implemented limited access program resulted in the least negative result. (As mentioned above, it may be that non-monetary returns result in an unquantified positive return.) This may account for the unexpectedly low participation in the fishery under the limited access program. Vessel owners may find better returns in other fisheries and therefore be less motivated to remain in the Mau Zone fishery. Break-even calculations in the same analysis suggest that "the average vessel

would have to fish 107 days per year or approximately three times the current average. At this level of effort the fishery could only support three or four vessels" (p. 65). According to the DEIS, this poor performance can be attributed to relatively low catch rates (which may reflect lower efficiency for smaller vessels) and a smaller proportion of the catch composed of high value species such as *opakapaka* and *onaga*. Catches are mostly sold in the local Hawaii fresh fish market and NWHI landings tend to consist of larger fish that are preferred by the restaurant market. The DEIS notes that one would expect prices to have increased in the 1990s because the total volume of locally caught bottomfish declined. This did not occur, perhaps due to competition from fish imported into Hawaii.

3.3 Social and Cultural Characteristics of the Fishery

Given that economic performance has been generally poor in the Mau Zone fishery, socio-cultural factors take on added meaning since they must add value that supports continued participation. The DEIS outlines the constellation of these attributes, which range the enjoyment derived from fishing and the lifestyle it entails to providing an identifiable place in the community and allowing activities that strengthen social bonds. In 1995-1996, Hamilton and Huffman (1997) conducted a survey of small-boat owners who engage in Hawaii's commercial and recreational fisheries, including the troll, pelagic handline and bottomfish handline fisheries. The survey found that the largest ethnic groups represented in the sample were Japanese (33%), mixed with part-Hawaiian (16%) and Caucasian (12%). Hamilton and Huffman speculated that the high proportion of Japanese and part-Hawaiians in the sample reflects the strong traditional connections that these two ethnic groups have with the sea. With specific regard to the NWHI bottomfish fishery, a 1993 survey of 15 owner-operators and hired captains who participated in the fishery found that 87% were Caucasian and 13% were part-Hawaiian (Hamilton 1994). However, it is likely that the ethnic composition of the deckhands aboard these vessels is much more mixed and reflects the highly diverse ethnic character of the state's total population.

The community development program discussed in Amendment 5 derives from the Council's concern that communities comprised of descendants of indigenous people should share in the benefits of Council-managed fisheries. As noted, one fifth of the target level of limited access permits, or two permits, are reserved for this program. As of December 2001, the program had not yet been established.

Most Mau Zone fishers live on Kauai and Oahu. The demographic distribution of permit holders after implementation of the limited entry program in 1999 included four permit holders from Kauai, four from Oahu, one from the island of Hawaii and one from the mainland US. This permit distribution has generally been consistent over the history of management in the Mau Zone.

4.0 ANALYSIS OF THE BENEFICIAL AND ADVERSE IMPACTS OF MANAGEMENT ALTERNATIVES

With the exception of the permit fee requirement for the Hoomalu Zone, this regulatory adjustment falls within the framework of measures proposed in the FMP (Amendment 5). The impact analysis provided here is an extension of the analysis provided in Amendment 5, which established the limited access system for the Mau Zone fishery.

4.1 Ecological Impacts

All of the alternatives are intended to maintain the number of Mau Zone permit holders at the target level of ten vessels identified in Amendment 5. Assuming that all of the alternatives (except the no-action alternative) would achieve this objective, the ecological impacts would be expected to be the same no matter which is chosen. Thus the negative ecological impacts would not be any more severe than those outlined in the Amendment 5 analysis (that analysis concluded that Amendment 5's preferred alternative would result in positive ecological impacts relative to the no-action alternative, which was to maintain an open-access fishery).

Fishing effort is likely to be less under the no-action alternative (which would not provide any means for allowing new entry as attrition occurs under the "use it or lose it" provision) than under any of the other alternatives (each of which would allow for new entry as attrition occurs, up to a maximum of ten permits). Assuming that negative ecological impacts increase with increasing fishing effort, the no-action alternative is likely to result in less severe negative ecological impacts than any of the other alternatives. But as concluded in the Amendment 5 analysis, a fishery consisting of a fleet of ten vessels would be supportive of the objective of ensuring the long-term productivity of bottomfish stocks, would have no adverse impact on habitat of bottomfish species or protected species, and would not directly affect any endangered or threatened species.

Amendment 5 examined two scenarios: a "worst case" in which 20 vessels would qualify for limited access permits with the number of vessels falling to ten in five years, and a "likely" scenario in which 14 vessels would initially qualify and the number would fall to ten in the third year. In fact, the number of vessels reached ten in the first year (2000) and, as noted, this regulatory adjustment is intended to maintain fishing effort at this level (assuming no substantial change in the fishing power of individual vessels). In the likely scenario mentioned above, CPUE was anticipated to exceed the high of 290 lbs/vessel/day seen in 1997 by the fourth year and maximum sustainable yield (MSY) was expected to be reached by year 15 (although 90 percent of MSY is reached within six years). Given that the target fleet size of ten vessels was reached immediately rather than in year three, CPUE and total catch increases would be expected to occur somewhat more rapidly.

Amendment 5 analysis also concluded that restricting participation would lead to more conservative fishing strategies on the part of individual fishermen since they would not be

competing with participants with only a short-term interest in the fishery. The smaller the pool of participants, the more likely they would agree among themselves to establish informal arrangements to limit effort and conserve stocks. In this regard the four alternatives can be subdivided into two categories. The weighted point system and limited transferability alternatives would favor experienced bottomfish fishermen while the full transferability and lottery alternatives would allow new participants with no previous experience in the fishery. The alternatives that favor experienced fishers are more likely to support restraint and the development of informal arrangements. This is true to the degree that past experience encourages an appreciation of sustainable use and the ability to develop informal arrangements with other participants. By the same token, long-term participants would be expected to have more incentive and ability to not damage habitat during fishing operations.

If no action is taken, any decrease in permits would be permanent (at least until the point at which provisions for new entry are implemented). The remaining vessels would likely achieve a higher per vessel CPUE and catch rates near MSY would likely be reached sooner. By the same token, fewer vessels would result in a lower probability of protected species interactions, less bycatch, and reduced incidental harvest of non-BMUS fish stocks.

The DEIS for the Bottomfish FMP cited above analyzed the impacts of the bottomfish fishery on protected species, focusing on the Hawaiian monk seal. It concluded that "the available information indicates that the NWHI bottomfish fishery accounts for a very small proportion of potential impacts to the Hawaiian monk seal. There is no information at this time to suggest that the current level of bottomfish fishing activities in the NWHI is inhibiting the recovery of the Hawaiian monk seal and contributing to the possible loss of value associated with preservation of this species..." (WPRFMC 2001 pg 4-6). The indirect effects of the bottomfish fishery on the Hawaiian monk seal through competition for prey or alteration of prey assemblages by removal of key predator fishes appear to be minimal. The deep-slope bottomfish fishery in Hawaii concentrates on species of eteline snappers, carangids and a single species of grouper concentrated at depths of 30-150 fm. This depth range is outside NMFS' designated critical habitat for the Hawaiian monk seal, which extends out from shore to 20 fathoms in ten areas of the NWHI. In addition, research on the diet of monk seals indicates that the species commonly caught in the bottomfish fishery represent a small fraction of the total number of monk seal prey items.

The NMFS observer program for the NWHI bottomfish fishery conducted from October 1990 to December 1993 reported a moderate level of interactions between seabirds and the bottomfish fishery (Nitta 1999). Interactions were characterized by attempted bait theft. Although there is a possibility of accidental hooking, circle hooks used in the bottomfish fishery do not lend easily to snagging. No seabird injuries or mortalities were reported while fishermen were fishing for bottomfish. One interaction involving a Laysan albatross occurred while a bottomfish fishing vessel was trolling for pelagic species. The bird became hooked but was subsequently released alive. While continued bottomfish fishing may affect a limited number of individual seabirds, it is expected to have no effect on seabird distribution, survival or population structure. The

potential for indirect interaction due to competition for prey is negligible, as seabirds do not prey upon bottomfish.

During the summer and autumn hatchling season for green sea turtles, fishing vessels at anchor or drifting at night with deck lights on may attract and concentrate hatchling turtles, thereby making them more susceptible to predators such as sharks, snappers and barracuda. However, the NMFS observer program for the NWHI bottomfish fishery conducted from October 1990 to December 1993 reported no interactions between sea turtles and the bottomfish fishery (Nitta 1999). Continued bottomfish fishing in the NWHI is expected to have little effect on sea turtles in the region.

The adverse impacts of the bottomfish fishery and current management regime on EFH, HAPC, marine habitat, and ecosystems are minimal. The measures considered here are expected to have minimal effects on EFH and HAPC in the NWHI. The regulations under the Bottomfish and Seamount Groundfish FMP both directly and indirectly reduce the likelihood of damage to habitat caused by fishing gears and operations. Currently, the FMP's management measures prohibit the use of destructive gears such as explosives, poisons, trawl nets and bottom-set groundlines in the fishery. The DEIS identified vessel grounding as the major potential habitat impact resulting from the fishery. However, vessel groundings are rare and cause only localized impacts, so the adverse impacts to habitat resulting from the fishery are likely to be small. Only two fishing vessels have run aground in the NWHI during the past 15 years. One was a swordfish longline vessel and the other a lobster boat. In both cases there was localized mortality of corals under the hull but no reported effects on surrounding areas (WPRFMC 2001).

The day-to-day operations of a fishing vessel can produce a number of waste products, including oil, sewage and garbage that could affect marine habitat (WPRFMC 1998a). Under Annex V of the International Convention for the Prevention of Pollution from Ships, known as MARPOL-V, vessels are prohibited from discharging garbage and plastics. Further, the US Coast Guard published an interim rule (64 FR 26672, May 7, 1999) on ballast water management establishing voluntary guidelines for all waters (except the Great Lakes and sections of the Hudson River) of the US and mandatory reporting and sampling procedures for nearly all vessels entering US waters. However, given the small number of bottomfishing vessels and effort in the NWHI and the fact that most vessels do not carry ballast water, the impact of marine pollutants from these operations is likely to be negligible.

Bottomfish vessels fish in shallower waters for species such as *uku* by generally drifting or slowly trolling rather than by anchoring. When anchoring is necessary to maintain position during fishing operations, it is conducted at depths between 30 and 175 fathoms, and most often at depths between 40 and 60 fathoms. Damage to EFH/HAPC is minimal as much of the habitat within the depths of occurrence for bottomfish anchoring is a mosaic of sandy low-relief areas and rocky high relief areas. Reef building corals are generally not found deeper than 50 fathoms, where light is greatly attenuated. Additionally, the anchoring mechanism utilized to maintain a vessel's position is a 3/4-inch bendable steel rod fashioned in the shape of a four sided J-hook.

4.2 Economic and Social Impacts

The limited access program implemented under Amendment 5 was meant to address poor economic performance in the Mau Zone fishery. Based on the cost benefit analysis discussed above, it may be that the no action alternative, if it resulted in further attrition, might result in a higher net benefit, as measured in economic terms. In purely economic terms there would not be a significant difference between the other four alternatives. All of the alternatives proposed in this adjustment are intended to supplement the limited access program so that the optimal target level of ten vessels is achieved. The difference in net benefits between the two alternatives that limit participation to experienced fishers and the two alternatives that do is likely to be small. However, more experienced fishers may be able to keep costs down and fish more efficiently than less-experienced fishers, thereby achieving better returns and increasing net benefits.

Enforcement and administrative costs should not substantially change under any of the alternatives (except the no-action alternative) since ten vessels, the number that fished in 2000 (the first year of the limited access program), would continue to fish. There could be a decline in vessel numbers under the no-action alternative. Existing federal enforcement costs are largely fixed and would not change at the margin given the small number of vessels involved. As argued in Amendment 5, under limited access, self enforcement and an increased willingness for fishermen to cooperate with enforcement efforts should decrease government enforcement costs. This would be true under all the alternatives presented here.

Although the economic benefits of allowing new participants up to the target level of ten vessels may be marginal, any of the four action alternatives would generate added social benefits in comparison to the no-action alternative. There are also different social impacts between the four action alternatives. Because the action alternatives do not differ substantially in their ecological and economic impacts, social impacts weigh heavily in this analysis.

The preferred alternative best addresses issues of fairness and equity since it bases new entry on past experience in bottomfish fisheries generally and NWHI fisheries in particular. This approach recognizes that there is a community of fishers that have a historical stake in the fishery. Limited transferability would have a similar effect. But should demand for permits increase, this would give permits monetary value, such a system would favor those applicants that have greater financial resources.

5.0 National Standards for Fishery Conservation and Management

Section 301 of the MSA established ten national standards for fishery conservation and management. Accordingly, FMPs and amendments shall be consistent with these standards. The way in which this framework regulatory adjustment is consistent with these standards is discussed below.

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

Amendment 5 established a target level of ten permits for participation in the Mau Zone limited access program. This target is intended to prevent overfishing and it is estimated that this level of effort will result in catches approaching but not exceeding MSY. According to the MSA, optimum yield is that which provides the "greatest overall benefit to the Nation." It is determined on the basis of maximum sustainable yield, as reduced by any relevant economic, social, or ecological factors, and for an overfished fishery, it is determined so as to provide for rebuilding of the stock to a level consistent with producing the maximum sustainable yield. Taking social benefits into account and the FMP objective to provide high quality fish products to consumers, the target level of vessels is likely to achieve the greatest overall benefit. This regulatory adjustment is intended to maintain participation in the fishery at the target level.

(2) Conservation and management measures shall be based upon the best scientific information available.

The limited access program described in Amendment 5 and subsequently implemented was developed and analyzed based on the best available fishery data, including economic data. This regulatory adjustment is within the framework of potential measures discussed in Amendment 5 and benefits from updated data and similar analyses.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

This framework regulatory adjustment concerns bottomfish stocks in the Mau Zone, a management area in federal waters around the NWHI. The Council also manages bottomfish stocks in the Hoomalu Zone in the NWHI, adjacent to the Mau Zone, as well as in federal waters throughout the Hawaiian archipelago. This action would lead to greater consistency in regulations within the NWHI.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all

such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The Mau Zone limited access program implemented in Amendment 5 allocated fishing privileges, as would the process proposed in this regulatory adjustment. In developing the limited access program and this regulatory adjustment, attaining fairness and equity have been the primary goals. The preferred alternative is fair and open with a clear set of criteria to determine qualification for available permits. Under the limited access program a person may hold more than one permit only if he owns multiple vessels and only if each vessel separately qualifies under the eligibility criteria (50 CFR 660.61(h)(3)). This provision would also apply to new entrants who qualify under the measure described in this adjustment.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

According to the benefit-cost analysis presented in Amendment 5, a fleet consisting of the target level of ten vessels would not result in the most economically efficient outcome, as fewer vessels fishing more intensively would likely result in a more efficient fishery. Although the no-action alternative would likely result in a smaller fleet than the preferred alternative and therefore the possibility of a more efficient fishery, the social benefits stemming from greater participation (under the preferred alternative) are likely to outweigh the possible loss in economic efficiency.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The annual and five-year reviews proposed in Amendment 5 and implemented through regulation allow the Council to address variation and contingent factors. This regulatory adjustment does not affect these provisions.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This adjustment will not affect management or other enforcement costs and will not duplicate existing measures or regulations.

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The target level of ten vessels established in Amendment 5 takes into account the importance of the bottomfish fishery to fishing communities in Hawaii by allowing sufficient participation while preventing overfishing. This regulatory adjustment proposes measures to maintain participation at the target level.

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The bottomfish FMP, as it applies to the Hawaii bottomfish fishery, includes specific measures to minimize bycatch. The use of explosives, poisons, trawl nets and bottom set gillnets have been prohibited since the implementation of the FMP. Through reporting and observer requirements, information on bycatch is collected from the fishery. However, the NWHI hook-and-line fisheries have a relatively low level of bycatch and line fisheries generally have a lower level of bycatch mortality in comparison to net fisheries. This regulatory adjustment will not have any effect on the rate or disposition of bycatch.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The weighted point system proposed in this regulatory adjustment favors new entrants that have previous experience in the Hawaii bottomfish fishery. Participants with greater experience in the fishery are more likely to have the knowledge needed to reduce risks to safety.

6.0 OTHER APPLICABLE LAWS

6.1 National Environmental Policy Act

Pursuant to the National Environmental Policy Act (42 USC 4321 et seq.), its implementing regulations (40 CFR 1500-1508) and NOAA orders (NAO 216-6), this adjustment has been prepared in a manner that incorporates the required elements of an environmental assessment (EA). According to regulations (40 CFR 1508.9) an EA "Shall include brief discussions of the need for the proposal, of alternatives ..., the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." Section 3 discusses the need for this action and describes management alternatives, Section 4 discusses the impacts of the proposed action and alternatives, and Section 1 lists the agencies and persons consulted. The purpose of an EA is to provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (40 CFR 1508.9). NAO 216-6 (§6.02) provides specific guidance and criteria for this determination. The following determination employs these criteria.

6.1.1 Conclusions and Determination

a. The proposed action is not expected to jeopardize the sustainability of any target species that may be affected by this action.

b. The proposed action is not expected to jeopardize the sustainability of any non-target species that may be affected by the action.

c. The proposed action is not expected to cause substantial damage to ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in the Bottomfish FMP and its amendments.

d. The proposed action is not expected to have a substantial adverse impact on public health and safety.

e. The proposed action is not expected to adversely affect endangered or threatened species, marine mammals, or the critical habitat of these species.

f. The proposed action is not expected to have cumulative adverse effects that could have a substantial effect on target and non-target species.

g. The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g. benthic productivity, predator-prey relationships, etc).

h. The proposed action is not expected to have significant social or economic impacts which

are interrelated with adverse natural or physical environmental effects.

i. The proposed action may generate controversy in that it will select new entrants into the established Mau Zone limited entry bottomfish fishery. To address this potential controversy, the Council held several public meetings in order to develop a fair and equitable process for allocating new permits.

Based on the information contained in the environmental assessment and other sections of this document, I have determined that the proposed action to ___ is consistent with existing national policies and objectives set forth in sections 101 (a) and 101 (b) of the National Environmental Policy Act and will not significantly affect the quality of the human environment. As described in section 5.03c of NOAA Administrative Order 216-6, a Finding of No Significant Impact is supported and appropriate for the proposed action. Therefore, preparation of an environmental impact statement is not required by Section 101 (2) (C) of the National Environmental Policy Act or its implementing regulations.

_____ _____

William Hogarth
Assistant Administrator

Date

6.2 Paperwork Reduction Act

The major purpose of the Paperwork Reduction Act of 1995 is to minimize the paperwork burden on the public (e.g., fishermen) resulting from the collection of information by or for the Federal Government. The Act is intended to ensure that the information collected under the proposed action is needed and is collected in an efficient manner (44 U.S.C. 3501 (1)).

The existing permit application process and forms established by the FMP are sufficient to accommodate the proposed actions. The proposed measures require new applicants to submit an application and certification of qualifying criteria in order to be eligible for any limited access permits that may become available. Applicant eligibility would be established by submitting, with the permit application, documentation of qualified landings in the form of official State catch reports.

The annual federal paperwork burden per permit application is estimated at 1 person-hour. Given that only thirteen people applied for initial distribution of Mau Zone limited access permits (with ten individuals qualifying for permits), it seems unlikely that a greater number of people would apply for any permits that may become available. Assuming that between three and fifteen applicants will apply each year, the total paperwork burden, including appeal following permit denial, is estimated at between 5 to 17 person-hours per year.

6.3 Coastal Zone Management Act

Section 307(c)(1) of the Coastal Zone Management Act of 1972 requires that all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable.

The State of Hawaii coastal zone management policies directly relating to the action proposed in this adjustment are contained in the coastal ecosystems and economic resources categories of the Hawaii Revised Statues, Chapter 205a. These policies are to improve the technical basis for natural resource management and minimize adverse environmental effects from economic uses of the coastal zone resources. This adjustment helps conserve the bottomfish resource in the NWHI Mau Zone and, therefore, is consistent with the Hawaii coastal zone management program's policies.

6.4 Endangered Species Act

The Endangered Species Act of 1973 (ESA), as amended, prohibits the taking of endangered species except under limited circumstances. In 1986, and again in 1991, formal Section 7 consultations were completed for the FMP. Those Biological Opinions specified no anticipated incidental take of Hawaiian monk seals. On October 16, 2000, the NMFS SW Regional Administrator requested reinitiation of a Section 7 consultation under the ESA for the FMP. This ongoig consultation was initiated due to the amount of time that had lapsed since the last Biological Opinion was produced and because the FMP is undergoing a National Environmental Policy Act analysis. Existing regulations require all NWHI bottomfish fishermen to report interactions with protected species. Amendment 4 to the FMP authorized the Regional Administrator to place observers on board if needed, which is fully consistent with, and supportive of, the goals and objectives of the ESA. Fishermen are also required to attend a NMFS protected species workshop as a condition of receiving a permit. The proposed measures are not likely to increase the likelihood of endangered species interactions. It is anticipated that NMFS will conduct an informal consultation under the ESA prior to approval of these measures.

6.5 Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972, as amended, allows for the incidental take of marine mammals during commercial operations under certain limited circumstances. Hawaiian monk seals, designated as a depleted species, cannot be taken under the law. In 1989, all fisheries in Hawaii were classified as Category III under the Act, meaning that the fisheries were determined to have a remote likelihood or no known incidental taking of marine mammals. Amendment 4 to the FMP authorized the Regional Administrator to place observers on board if needed. The proposed adjustment is not likely to increase the likelihood of marine mammal interactions.

6.6 Regulatory Impact Review and Regulatory Flexibility Act

Executive Order 12866, "Regulatory Planning and Review," requires that the economic impacts of a proposed action be assessed. In accordance with the Executive Order, NMFS requires that a Regulatory Impact Review (RIR) be done for all regulatory actions that are of public interest, such as those associated with new or amended fishery management plans. The necessary elements of the RIR are incorporated in Section 2 (problem statement, management objectives, and management alternatives) and Section 4.2 (analysis of benefits and costs). Based on that analysis, it is determined that the proposed action is not likely to:

1) have an annual effect on the economy of $100 million or to adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4) raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Based on those findings, the proposed action is determined not to be significant under Executive Order 12866.

The Regulatory Flexibility Act (RFA) requires federal agencies to assess the impacts of their proposed regulations on small entities and to seek ways to minimize effects on small entities that would be disproportionately or unnecessarily adversely affected. When an action is expected to have a "significant economic impact" on a "substantial number" of "small entities," an Initial Regulatory Flexibility Analysis (IRFA) is required, followed after public comment and final determination of whether an RFA is required by a Final Regulatory Flexibility Analysis (FRFA).

A "small entity" is a commercial fishing company with annual receipts up to $3 million, a processing company with no more than 500 employees, a wholesaler with no more than 100 employees, a non-profit organization that is independently owned and not dominant in its field, or a government jurisdiction governing a population of less than 50,000.

The combination of "significant economic impact" on a "substantial number" is considered by NMFS to be met when an action results in one or more of the following criteria being met:

1) a decrease in annual gross revenues of more than 5 percent for 20 percent or more of affected small entities;
2) an increase in total costs of production of more than 5 percent (as a result of an increase in compliance costs) for 20 percent or more of affected small entities;
3) compliance costs as a percent of sales for small entities that are at least 10 percent higher

than compliance costs as a percent of sales for large entities for 20 percent or more of affected small entities;

4) capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or
5) two percent of affected small business entities being forced to cease business operations.

The proposed measure to establish eligibility criteria for new entry into the Mau Zone fishery would open new business opportunities to small entities and would not in any way increase the compliance or other costs of affected small entities. None of the five criteria would be met.

The proposed measure to charge fees for Hoomalu Zone permits would present a small financial burden to existing and prospective fishery participants. However, set at a level no greater than the administrative costs of permit issuance, it is very unlikely that the costs of compliance would trigger any of the five criteria. For example, in order to trigger the second criterion—the most likely one to be triggered, the permit fee would have to be greater than 5 percent of total production costs for at least 20 percent of fishery participants.

It is determined that the proposed action would not have a significant economic impact on a substantial number of small entities and an IRFA is therefore not required.

6.7 Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

Executive Orders 13178 (2000) and 13196 (2001) provide for the establishment of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. The principal purpose of the Reserve is to provide for the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands. The seaward boundary of the Reserve is 50 nautical miles from the centers of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. The inland boundary of the Reserve is the seaward of these land areas is the seaward boundary of Hawaii State waters and submerged lands and the seaward boundary of the Midway Atoll National Wildlife Refuge. The Reserve provisions call for certain controls over fishing activities, including bottomfishing. The controls include spatial closures and caps on participation and catch. The legal provisions of the Reserve have not been fully implemented and the relationship between the Reserve provisions and those enacted under other authorities, including the FMP measures enacted under the MSA, are not clear. The implications of the Reserve on the NWHI bottomfish fishery are therefore not yet clear. The analyses presented here assumed that the Reserve would have no effect on the fishery.

7.0 BIBLIOGRAPHY

HMSRT (Hawaiian Monk Seal Recovery Team), 1999. Hawaiian Monk Seal Recovery Team Meeting, December 6-7, 1999.

Johanos, T., 2000. Monk seals in the Main Hawaiian Islands. The Monachus Guardian 3(1):57-59.

Kobayashi, D., 1997. An Update of Maximum Sustainable Yield for the Bottomfish Fishery in the Northwestern Hawaiian Islands. NMFS Honolulu Laboratory draft manuscript.

Marine Mammal Commission, 2000. Annual Report to Congress, 1999. Marine Mammal Commission, Bethesda, Maryland.

Nitta, E. 1999. Draft. Summary Report. Bottomfish Observer Trips in the NWHI. October 1990 to December 1993. NMFS Pacific Islands Area Office, Pacific Islands Protected Species Program, Honolulu.

WPRFMC (Western Pacific Regional Fishery Management Council), 1989. Amendment 2 to the Establishment of the Hoomalu and Mau Zone fishery management areas in the NWHI. Western Pacific Regional Fishery Management Council, Honolulu.

WPRFMC (Western Pacific Regional Fishery Management Council), 1991a. Amendment 3 to fishery management plan for Bottomfish and Seamount Groundfish Fishery of the Western Pacific Region; Defines recruitment overfishing and delineates the process by which overfishing is monitored and evaluated. Western Pacific Regional Fishery Management Council, Honolulu.

WPRFMC (Western Pacific Regional Fishery Management Council), 1991b. Amendment 4 fishery management plan for Bottomfish and Seamount Groundfish Fishery of the Western Pacific Region; Requires vessel owners or operators to notify the NMFS at least 72 hours before leaving port and allows Federal observers to be placed on board bottomfish vessels.

WPRFMC (Western Pacific Regional Fishery Management Council), 1998a. Amendment 5 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fishery of the Western Pacific Region; Northwestern Hawaiian Islands Mau Zone limited access program. Western Pacific Regional Fishery Management Council, Honolulu.

WPRFMC (Western Pacific Regional Fishery Management Council), 1998b. Magnuson-Stevens Act Definitions and Required Provisions. Amendment 6 to the Bottomfish and Seamount Groundfish Fishery Management Plan, Amendment 8 to the Pelagic Fishery Management Plan, Amendment 10 to the Crustaceans Fishery Management Plan, Amendment 4 to the

Precious Corals Fishery Management Plan. Western Pacific Regional Fishery Management Council, Honolulu.

WPRFMC (Western Pacific Regional Fishery Management Council), 1999. Bottomfish and seamount groundfish fisheries of the Western Pacific Region 1998 annual report. Western Pacific Regional Fishery Management Council, Honolulu.

WPRFMC (Western Pacific Regional Fishery Management Council), 2000a. The Population Biology of the black-footed albatross in relation to mortality caused by longline fishing. Western Pacific Regional Fishery Management Council, Honolulu.

WPRFMC (Western Pacific Regional Fishery Management Council), 2000b. Draft Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region. Western Pacific Regional Fishery Management Council, Honolulu.

WPRFMC (Western Pacific Regional Fishery Management Council), 2001. Draft Environmental Impact Statement; Bottomfish and Seamount Groundfish Fishery in the Western Pacific Region. Western Pacific Regional Fishery Management Council, Honolulu.

8.0 PROPOSED REGULATIONS

For the reasons set out in the preamble, 50 CFR part 660 is to be amended as follows:

PART 660--FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation of part 660 continues to read as follows:

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

2. § 660.13 is amended to read as follows:

§ 660.13 Permits and fees.

(a) Applicability. The requirements for permits for specific Western Pacific fisheries are set forth in subparts C through F of this part.

(b) Validity. Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) Application. (1) A Southwest Region Federal Fisheries application form may be obtained from the Pacific Area Office to apply for a permit to operate in any of the fisheries regulated under subparts C, D, E, and F of this part. In no case shall the Pacific Area Office accept an application that is not on the Southwest Region Federal Fisheries application form. A completed application is one that contains all the necessary information, attachments, certifications, signatures, and fees required.

(2) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) Change in application information. A minimum of 10 days should be given for the Pacific Area Office to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in invalidation of the permit.

(e) Issuance. After receiving a complete application, the FMD will issue a permit to an applicant who is eligible under Sec. 660.21, Sec. 660.41, Sec. 660.61, or Sec. 660.81, as appropriate.

(f) Fees. (1) PIAO will not charge a fee for a permit issued under subpart D or F of this part.

(2) PIAO will charge a fee for each application for a Hawaii longline limited access permit (including permit transfers and permit renewals) and Mau and Hoomalu Zone limited access permit (including permit renewals). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining the administrative costs of each special product or service. 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 issuance of a Hawaii longline or Mau or Hoomlau Zone limited access permit.

(g) Expiration. (1) Permits issued under subparts C, D, and F of this part are valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

(2) Permits issued under subpart E of this part expire at 2400 local time on December 31.

(h) Replacement. Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) Transfer. An application for a permit transfer under Secs. 660.21(h), 660.41(e), or 660.61(e), or for registration of a permit for use with a replacement vessel under Sec. 660.61(k), must be submitted to the PIAO as described in paragraph (c) of this section.

(j) Alteration. Any permit that has been altered, erased, or mutilated is invalid.

(k) Display. Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing management unit species shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(l) Sanctions. Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

(m) Permit appeals. Procedures for appeals of permit and

administrative actions are specified in the relevant subparts of this part.

3. § 660.61 is amended to read as follows:

§ 660.61 Permits.

(a) Applicability. (1) The owner of any vessel used to fish for bottomfish management unit species in the Northwestern Hawaiian Islands Subarea must have a permit issued under this section and the permit must be registered for use with the vessel.

(2) The PIAO will not register a single vessel for use with a Hoomalu Zone permit and a Mau Zone permit at the same time.

(3) The Hoomalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(b) Submission. (1) An application for a permit required under this section must be submitted to the PIAO as described in Sec. 660.13.

(2) Hoomalu Zone limited access permit. In addition to an application under Sec. 660.13(c), each applicant for a Hoomalu Zone permit must also submit a supplementary information sheet provided by the PIAO, which must be signed by the vessel owner or a designee and include the following information:

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

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

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

(3) Mau Zone limited access permit. Mau Zone permits issued before June 14, 1999, are invalid. In addition to an application under Sec. 660.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by the PIAO, which must be signed by the vessel owner or a designee and include the following information:

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

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

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

(c) Sale or transfer of Hoomalu limited access permits to new vessel owners. (1) A Hoomalu Zone permit may not be sold or otherwise transferred to a new owner.

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

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

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

(e) Hoomalu Zone limited access permit renewal. (1) A qualifying

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

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

(f) Issuance of new Hoomalu Zone limited access permits. The Regional Administrator may issue new Hoomalu Zone limited access permits under Sec. 660.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Hoomalu Zone are able to support additional fishing effort.

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

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

(A) Any amount of bottomfish management unit species, regardless of weight, if made on or before August 7, 1985;

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

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

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least

6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands.

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

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

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

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

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

(h) Issuance of new Mau Zone limited access permits. The Regional Administrator may issue new Mau Zone limited access permits under §660.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Mau Zone are able to support additional fishing effort.

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

(1) Point system. (i) One point will be assigned for each year in which the applicant was owner or captain of a vessel that made qualifying landings at least 2,500 lb (1,134 kg) of bottomfish management unit species from the main Hawaiian Islands.

(ii) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made at least five separate fishing trips with qualifying landings of at least 500 lb (227 kg) of bottomfish management unit species each trip from the Northwestern Hawaiian Islands. A maximum of 10 points

will be assigned under this paragraph.

(iii) An applicant who has been assigned the maximum number of points under paragraph (ii) of this section will be assigned one point for each year in which he or she was owner or captain of a vessel that made at least five separate trips with qualifying landings of at least 500 lb (227 kg) of bottomfish management unit species each trip, not including the five years for which points were assigned under paragraph (ii).

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

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

(2) For purposes of this paragraph Sec. 660.61(i), "qualifying landings" means any amount of bottomfish management unit species lawfully harvested from the exclusive economic zone or state waters surrounding the Hawaiian archipelago and offloaded for sale. No points shall be assigned to an owner for any qualifying landings reported to the State of Hawaii more than 1 year after the landing.

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

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

(5) For each of paragraphs (i)(1)(i) through (i)(1)(v) of this section, the PIAO shall assign points based on the landings of one permitted vessel to only one owner if the vessel did not have multiple owners during the time frame covered by the subordinate paragraphs. If a vessel had multiple owners during a time frame

covered by any of paragraphs (i)(1)(i) through (i)(1)(v) of this section (including joint owners, partners, or shareholders of a corporate owner), the PIAO will assign the points for that subordinate paragraph to a single owner if only one owner submits an application with respect to the landings of that vessel during that time frame. If multiple owners submit separate applications with respect to the same landings of the same vessel during the same time frame, then the PIAO shall:

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

(ii) If there is no agreement:

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

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

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

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

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

(2) A Mau Zone permit holder may apply under Sec. 660.13 to the PIAO to register the permit for use with another vessel if that

vessel is owned by the permit holder, and is no longer than 60 ft (18.3 m).

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

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

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

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

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

(l) Appeals of permit actions. (1) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, or revocation of his or her permit to the Regional Administrator.

(2) In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action appealed, and

the reasons therefore, and must be submitted within 30 days of the appealed action. The appellant may request an informal hearing on the appeal.

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

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

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