



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 181015948-9091-01]**

**RIN 0648-BI54**

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

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

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

**SUMMARY:** This proposed rule would establish an annual catch limit (ACL) of 492,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for each of the three fishing years 2018-19, 2019-20, and 2020-21. If NMFS projects that the fishery will reach the ACL in any given fishing year, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of the fishing year as an accountability measure (AM). This proposed rule would also make housekeeping changes to the Federal bottomfish fishing regulations. The proposed rule supports the long-term sustainability of Deep 7 bottomfish.

**DATES:** NMFS must receive comments by [*insert date 30 days after date of publication in the **FEDERAL REGISTER***].

**ADDRESSES:** You may submit comments on the proposed rule, identified by NOAA-NMFS-2018-0121, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0121>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

*Instructions:* NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept

anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

NMFS prepared a draft environmental assessment (EA) that describes the potential impacts on the human environment that could result from the proposed action. The draft EA and other supporting documents are available at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Brett Schumacher, NMFS PIRO Sustainable Fisheries, 808-725-5185.

**SUPPLEMENTARY INFORMATION:** NMFS and the Western Pacific Fishery Management Council (Council) manage the Deep 7 bottomfish fishery in Federal waters around Hawaii under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP), as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Hyporthodus quernus*). The regulations at Title 50, Code of Federal Regulations, part 665 (50 CFR 665.4) require NMFS to specify an ACL for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council.

The Council recommended that NMFS implement the proposed ACL and AMs for MHI Deep 7 bottomfish in fishing years 2018-19, 2019-20, and 2020-21. The Council recommended the proposed ACL based on the benchmark 2018 bottomfish stock assessment, and in consideration of the risk of overfishing, past fishery performance, the acceptable biological catch recommendation from its Scientific and Statistical Committee, and input from the public.

The 2018 stock assessment estimated the overfishing limit for the MHI Deep 7 bottomfish stock complex to be 558,000 lb, assuming three years of identical catch in fishing years 2018-19, 2019-20 and 2020-21. This new overfishing limit is 206,000 lb more than the estimated overfishing limit from the 2011 stock assessment, as updated in 2015. The proposed ACL of 492,000 lb is 186,000 lb more than the ACL that NMFS specified last year based on the previous stock assessment (82 FR 29778, June 30, 2017). The ACL is associated with up to a 40 percent probability of overfishing for each fishing year up to 2020-21, and is more conservative than the 50 percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson-Stevens Act.

NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If NMFS projects the fishery will reach the ACL, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of the fishing year, as an AM. As an additional AM, in the event that NMFS and the Council determine that the final MHI Deep 7 bottomfish catch exceeds the ACL in any given year, NMFS would reduce the ACL for the subsequent fishing year by the amount of the overage.

The fishery has not caught the specified annual limit in any year since 2011, and NMFS does not expect the proposed rule to result in a change in fishing operations, or other changes to the conduct of the fishery that would result in significant environmental impacts.

This proposed rule would also make housekeeping changes to the regulations at 50 CFR Part 665 A - Western Pacific Fisheries. The proposed rule removes the description of the process of setting an annual total allowable catch, which has been superseded by the ACL process. The housekeeping changes also include updates to the name of the multispecies stock complex and updates and revisions to the scientific, local, and/or common names of several species. This includes corrections to provisions of

the regulations that have been amended by a final rule (84 FR 2726; February 8, 2019) to reclassify six species from the Hawaii bottomfish MUS table at 50 CFR 665.201 as ecosystem component species. Specifically, this proposed rule would make edits in definitions sections (sections 665.220 and 665.401) to remove diacriticals (which are not consistently represented across different typefaces resulting in misspellings) in local fish names, reorder species listed in a table so they are alphabetical by scientific name, and correct a misspelling of *P. sieboldii*. The February 8, 2019, rule will become effective on March 11, 2019, which is before this current action can be finalized. Therefore, the regulatory text of this proposed rule is based upon the regulatory language as amended by the February 8, 2019, rule.

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive any comments by the date provided in the DATES heading, not postmarked or otherwise transmitted by that date. Regardless of the final rule, all other management measures will continue to apply in the fisheries.

## **Classification**

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

### *Certification of Finding of No Significant Impact on Substantial Number of Small Entities*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for it, are contained in the preamble to the proposed rule. NMFS proposes to implement an ACL of 492,000 lb for MHI Deep 7 bottomfish, as recommended by the Western Pacific Fishery Management Council, for each fishing year 2018-19, 2019-20 and 2020-21. Each fishing year begins on September 1 and ends on August 31 of the following year. NMFS monitors MHI Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. The AM for fishing years 2018-19, 2019-20 and 2020-21 would

remain the same as the AM that is currently in place. That is, if NMFS projects that the fishery will reach this limit in any fishing year, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of that fishing year as an AM.

The proposed ACLs are 186,000 lb more than the ACL that NMFS implemented for the 2017-18 fishing year, 174,000 lb more than the ACL that NMFS implemented for the 2016-17 fishing year, 166,000 lb more than the ACL that NMFS implemented for the 2015-16 fishing year, and 146,000 more than the ACL that NMFS implemented in each of the four fishing years, 2011-12, 2012-13, 2013-14, and 2014-15. The proposed ACLs are greater than the highest reported annual landings over the past five fishing seasons by more than 180,000 lb. Therefore, NMFS does not expect that the fishery would reach the ACL during any of the next three fishing years.

This rule would affect commercial and non-commercial fishermen who catch MHI Deep 7 bottomfish. In general, the relative importance of MHI bottomfish to commercial participants as a percentage of overall fishing or household income is unknown, as the total suite of fishing and other income-generating activities by individual



operations across the year has not been examined. For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

Based on available information, NMFS has determined that all affected entities - vessels in the commercial and non-commercial fisheries for MHI Deep 7 bottomfish - are small entities under the NMFS standard, as they are engaged in the business of fish harvesting, independently owned or operated, not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

During the 2016-17 fishing year, 338 fishermen reported catching 234,299 lb of MHI Deep 7 bottomfish valued at \$1,646,044, which is consistent with catch and participation in recent years. During each of fishing years 2014-15, 2015-16, and 2016-2017, an average of 372 fisherman have reported catching 266,000 lb of MHI Deep 7 bottomfish. As for revenues earned by fishermen from MHI Deep 7 bottomfish, State of Hawaii records report that 312 of the 338 fishermen sold their MHI Deep 7 bottomfish catch during the 2016-17 fishing year. These 312 individuals sold a combined total of 222,407 lb (95 percent of reported catch) at a value of \$1,646,044. Based on these revenues, the average price for MHI Deep 7 bottomfish in 2016-17 was approximately \$7.40/lb. NMFS assumed that either the remaining 26 commercial fishermen sold no Deep 7 bottomfish, or the State of Hawaii reporting program did not capture their sales. With regard to the 2017-18 fishing year, as of October 1, 2018, revenues from sales of MHI Deep 7 bottomfish totaled \$1,661,346 from 212,751 lb sold, yielding an average price of \$7.81 per lb sold.

Assuming that the fishery attains the ACL of 492,000 in an individual fishing year, and using the 2016-17 average price of \$7.40/lb, NMFS expects the potential annual fleet-wide revenue during each of the 2018-19, 2019-

20 and 2020-21 fishing years to be \$3,640,800 (or approximately \$3,458,760 under the assumption that 95 percent of catch is sold). If the MHI Deep 7 bottomfish catch reached the ACL during a fishing year, and all of the catch was sold by the same number of fishermen with sales during 2016-17, each of these 312 commercial fishermen could potentially earn on average \$11,669 from the sale of 1,577 lb of Deep 7 bottomfish. If the fishery reaches the ACL, and 95 percent of all MHI Deep 7 bottomfish catch was sold, then each of these 312 commercial fishermen would sell an average of 1,498 lb of Deep 7 bottomfish valued at about \$11,085, which is well below the \$11 million threshold.

Even though this proposed rule would apply to a substantial number of vessels, i.e., 100 percent of the bottomfish fleet, NMFS does not expect this rule to have a significantly adverse economic impact on individual vessels because of the unlikelihood of reaching the ACL. Landings information from the past five fishing years shows an average catch of 274,100 lb, suggesting that Deep 7 bottomfish landings in the MHI are not likely to reach the proposed ACL of 492,000 lb in any fishing year. The proposed rule would not impose additional reporting or record-keeping requirements on small entities.

The proposed rule does not duplicate, overlap, or conflict with other Federal rules, and it is not expected to have a significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate economic impacts from the proposed rule based on home port, gear type, or relative vessel size. The proposed rule will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

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

**List of Subjects in 50 CFR Part 665**

Annual catch limits, Accountability measures,  
Bottomfish, Fisheries, Fishing, Hawaii, Pacific Islands.

Dated: March 6, 2019.

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

For the reasons set out in the preamble, NMFS proposes  
to amend 50 CFR part 665 as follows:

**PART 665 - FISHERIES IN THE WESTERN PACIFIC**

1. The authority citation for 50 CFR part 665  
continues to read as follows:

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

2. In § 665.12, revise the definition of "Fishing  
year" to read as follows:

**§ 665.12 Definitions.**

\* \* \* \* \*

*Fishing year* means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31, with the exception of fishing for Deep 7 bottomfish and any precious coral MUS.

\* \* \* \* \*

3. Amend § 665.201 by,

a. adding, in alphabetical order, the definitions of "Deep 7 bottomfish" and "Deep 7 bottomfish fishing year;"

b. revising the definition of "Hawaii bottomfish management unit species (Hawaii bottomfish MUS);" and

c. removing the definition of "Hawaii restricted bottomfish species fishing year;"

The revision and additions to read as follows:

**§ 665.201 Definitions.**

As used in §§665.200 through 665.219:

*Deep 7 bottomfish* means the following species:

<b>Local name</b>	<b>Common name</b>	<b>Scientific name</b>
lehi	silver jaw jobfish	<i>Aphareus rutilans</i>
ehu	squirrelfish snapper	<i>Etelis carbunculus</i>
onaga	longtail snapper	<i>Etelis coruscans</i>
hapuupuu	sea bass	<i>Hyporthodus quernus</i>
opakapaka	pink snapper	<i>Pristipomoides filamentosus</i>
kalekale	pink snapper	<i>Pristipomoides sieboldii</i>
gindai	snapper	<i>Pristipomoides zonatus</i>

*Deep 7 bottomfish fishing year* means the year beginning at 0001 local time on September 1 and ending at 2400 HST on August 31 of the next calendar year.

\* \* \* \* \*

*Hawaii bottomfish management unit species (Hawaii bottomfish MUS)* means the following species:

<b>Local name</b>	<b>Common name</b>	<b>Scientific name</b>
lehi	silver jaw jobfish	<i>Aphareus rutilans</i>
uku	gray jobfish	<i>Aprion virescens</i>
ehu	squirrelfish snapper	<i>Etelis carbunculus</i>
onaga	longtail snapper	<i>Etelis coruscans</i>
hapuupuu	sea bass	<i>Hyporthodus quernus</i>
opakapaka	pink snapper	<i>Pristipomoides filamentosus</i>
kalekale	pink snapper	<i>Pristipomoides sieboldii</i>
gindai	snapper	<i>Pristipomoides zonatus</i>

*Main Hawaiian Islands non-commercial bottomfish permit* means the permit required by §665.203(a)(2) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any Hawaii bottomfish MUS or ECS in the MHI Management Subarea.

\* \* \* \* \*

4. In § 665.204, revise paragraphs (h), (i), and (j) to read as follows:

**§ 665.204 Prohibitions**

\* \* \* \* \*

(h) Fish for or possess any Deep 7 bottomfish as defined in §665.201, in the MHI management subarea after a closure of the fishery, in violation of §665.211.

(i) Sell or offer for sale any Deep 7 bottomfish as defined in §665.201, after a closure of the fishery, in violation of §665.211.

(j) Harvest, possess, or land more than a total of five fish (all species combined) identified as Deep 7 bottomfish in §665.201 from a vessel in the MHI management subarea, while holding a MHI non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of §665.212.

\* \* \* \* \*

**§ 665.210 [Removed and reserved] .**

5. Remove and reserve § 665.210:

6. Revise § 665.211 to read as follows:

**§ 665.211 Annual Catch Limit (ACL) .**

(a) In accordance with § 665.4, the ACL for MHI Deep 7 bottomfish for each fishing year is as follows:

<b>Fishing Year</b>	<b>ACL (lb)</b>
2018-2019	492,000
2019-2020	492,000
2020-2021	492,000



(b) When an ACL is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the ACL is reached.

(c) On and after the date specified in §665.211(b), no person may fish for or possess any Deep 7 bottomfish in the MHI management subarea, except as otherwise allowed in this section.

(d) On and after the date specified in §665.211(b), no person may sell or offer for sale Deep 7 bottomfish, except as otherwise authorized by law.

(e) Fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally registered to Mau Zone, Ho'omalulu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

7. Revise § 665.212 to read as follows:

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

No more than a total of five fish (all species combined) identified as Deep 7 bottomfish may be harvested, possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the MHI management subarea. Charter boat customers are also subject to the non-commercial bag limit.

8. In § 665.401, amend the definition of "Mariana bottomfish management unit species (Mariana bottomfish MUS) by revising the entry for Pink snapper to read as follows:

**§ 665.401 Definitions.**

\* \* \* \* \*

*Mariana bottomfish management unit species (Mariana bottomfish MUS)* means the following fish:

Local Name	Common name	Scientific name
* * * * *		
	pink snapper	<i>Pristipomoides sieboldii</i>
* * * * *		

9. In § 665.601, amend the definition of "PRIA bottomfish management unit species (PRIA bottomfish MUS)" by revising the entry for Sea bass to read as follows:

**§ 665.601 Definitions.**

\* \* \* \* \*

*PRIA bottomfish management unit species (PRIA bottomfish MUS)* means the following fish:

Common name	Scientific name
* * * * *	
Sea bass	<i>Hyporthodus quernus</i>
* * * * *	

[FR Doc. 2019-04359 Filed: 3/11/2019 8:45 am; Publication Date: 3/12/2019]