

public review, we are extending the comment period to January 15, 1999.

Dated: December 30, 1998.

**Thomas O. Melius,**

*Acting Director.*

[FR Doc. 99-144 Filed 1-5-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[I.D. 111998B]

RIN 0648-AM13

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Atlantic Sea Scallop Fishery, and Atlantic Salmon Fishery; Fishery Management Plan (FMP) Amendments

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

**ACTION:** Amendment to a notice of availability (NOA) of an omnibus amendment to FMPs; request for comments.

**SUMMARY:** On December 1 and again on December 7, 1998, NMFS published NOAs of an omnibus amendment that included Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. The NOAs described the Essential Fish Habitat (EFH) measures contained in the omnibus amendment and initiated the Atlantic salmon overfishing definition and a framework provision for aquaculture contained in Amendment 1 to the Atlantic Salmon FMP. This notification informs the public of the regulations that may be implemented to allow for the framework adjustment process for Atlantic salmon. NMFS announces that this new management measure is currently under review by the Secretary of Commerce (Secretary) and invites public comment.

**DATES:** Comments must be received on or before February 1, 1999.

**ADDRESSES:** Comments on the amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the outside of the envelope: "Comments on Amendment 1 to the Atlantic Salmon FMP."

Copies of the Amendment, its regulatory impact review and

environmental assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036.

**FOR FURTHER INFORMATION CONTACT:**

Bonnie L. VanPelt, Fishery Management Specialist, 978-281-9244.

**SUPPLEMENTARY INFORMATION:** On December 1, 1998, NMFS published a notification in the **Federal Register** (63 FR 66110) announcing that the New England Fishery Management Council submitted for review and approval by the Secretary an omnibus amendment containing EFH provisions that would implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act. On December 7, 1998, NMFS published an amended notification in the **Federal Register** (63 FR 67450) announcing that in addition to the EFH measures, Amendment 1 to the Atlantic Salmon FMP would include a discussion of the Atlantic salmon overfishing definition and an aquaculture framework adjustment process for Atlantic salmon. The omnibus amendment describes and identifies EFH for specified fisheries, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH.

A proposed rule that would implement the regulations implementing a framework process to allow for Atlantic salmon aquaculture may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Because the December 7, 1998, notification did not specifically indicate that there would be any new regulations proposed, this notice informs the public that this additional management measure is under Secretarial review for approval, disapproval, or partial approval, and invites public comment. Public comments on the proposed rule must be received by the end of the comment period for the NOA on February 1, 1999, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by February 1, 1999, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the FMP amendment.

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

Dated: December 31, 1998.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99-220 Filed 1-5-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 981204297-8297-01; I.D. 110698B]

RIN 0648-AK21

#### Fisheries off West Coast States and in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Amendment 5

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

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

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region (FMP). Amendment 5 would establish a permanent limited access program for the Mau Zone Bottomfish fishery in the Northwestern Hawaiian Islands (NWHI). The intent of this action is to conserve and to support the long-term productivity of the bottomfish stocks by preventing the potential for excessive harvest capacity and to improve the low economic returns in the fishery.

**DATES:** Comments on this proposed rule must be received on or before February 22, 1999.

**ADDRESSES:** Comments on this proposed rule or Amendment 5 should be sent to Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office (PIAO), NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396. Copies of these documents are available from, Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813. Send comments on the modifications to approved collection-of-information requirements to PIAO, NMFS, 2570 Dole Street, Honolulu, HI, 96822 and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, NMFS, at 808-973-2985 or Kitty M. Simonds at 808-522-8220.

**SUPPLEMENTARY INFORMATION:** NMFS is proposing this rule to implement Amendment 5, as recommended by the Western Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 5 would establish a limited access program for the Mau Zone bottomfish fishery in the NWHI. The Mau Zone, which was established in 1989 as an open access zone adjacent to the Ho'omalulu bottomfish limited access zone, is located north of Kauai between 161°20' W. and 165°00' W. longitude in the U.S. exclusive economic zone around the Hawaiian Islands. The amendment is intended to prevent biological overfishing and improve poor economic returns that are plaguing the open access bottomfish fishery in the Mau Zone.

In January 1989, a permit system for the NWHI bottomfish fishery was implemented for the open access Mau Zone and limited access Ho'omalulu Zone. Two years later, on December 17, 1991, the Council established a control date putting vessel owners on notice that if they were issued a Mau Zone permit after the control date they may be ineligible for continued participation in the fishery if the Council decided to limit access to the fishery based on historic participation (56 FR 67598, December 31, 1991). Although the fishery in the Ho'omalulu Zone was stabilized, the fishery in the Mau Zone showed signs of instability as evidenced in the species mix of the catch and high turnover rate of permitted vessels in the Mau Zone. Between 1994 and 1996, the average Mau Zone vessel suffered a net return of minus \$1,186 per trip (-\$7,827 per season) and as a result was not able to cover annual costs. Also, in 1994 and 1995, bottomfish landings from the zone exceeded the maximum sustainable yield, which is estimated to be 131,210 lb (59,516 kg). Although it is difficult to estimate and interpret biological parameters from catch and effort data due to the instability and unpredictability of the number of vessels participating in the Mau Zone fishery year to year, the Council was concerned about the future biological condition of the bottomfish resources in the Mau Zone. The Council was also concerned that the declining bottomfish resources in the main Hawaiian Islands and the State's enforcement of the bottomfish fishing closed areas around

the main Hawaiian Island would force additional fishermen from the main Hawaiian Islands to move to the Mau Zone fishery. On March 27, 1997, the Council established a 2-year moratorium on the issuance of new Mau Zone permits (62 FR 8637, February 26, 1997).

Amendment 5 would: (1) restrict participation in the Mau Zone bottomfish fishery to vessel owners who hold limited access permits; (2) adopt, based on biological and economic factors, a long-term target number of 10 vessels that would be allowed to fish for bottomfish in the Mau Zone; (3) establish qualifying criteria for allocating initial limited access permits based on historic participation in the fishery (December 17, 1991, control date) and landing of bottomfish from the Mau Zone up to December 31, 1996; (4) prohibit the transfer, lease, charter, or sale of permits to reduce the number of vessels in the fishery in order to achieve the target number; (5) revoke limited access permits issued to partnerships or corporations upon a change in more than 50 percent ownership in the vessel, partnership or corporation; (6) limit the amount of time a permit holder may register a limited access permit for use with a leased or chartered vessel; (7) limit the length of replacement vessels to 60 ft (18.3 m); (8) require permit holders to make a minimum of five landings of at least 500 lb (227 kg) each of bottomfish management unit species each year from the Mau Zone to qualify for permit renewal; (9) require the Council to undertake a 5-year comprehensive review of the limited access program to determine its effectiveness in meeting the objectives of the FMP; (10) require the Council to develop criteria to allow new entry into the Mau Zone when the number of permitted vessels falls below 10; and (11) reserve 20 percent of the long-term target number of limited access permits, i.e., two permits, for a Western Pacific Community Development Program (CDP). The above measures and other requirements, such as establishing a fee for processing Mau Zone permits, specifying an appeals process for permit actions, and prohibiting the retention of incidentally-caught bottomfish in the Mau Zone without a limited access permit are described in Amendment 5.

Since March 1997, there has been a moratorium on the issuance of new permits for harvesting bottomfish in the Mau Zone to stabilize effort in the fishery while the Council developed a permanent limited access program (see the final rule published in the February 26, 1997, issue of the **Federal Register** at 62 FR 8637). The moratorium expires

on March 27, 1999, at which time this proposed rule is expected to be implemented. Current holders of Mau Zone (open access) permits, which expire on December 31, 1998, and are renewable for another year, have been advised that if Amendment 5 is approved by the Secretary of Commerce (Secretary), renewed Mau Zone permits will expire 45 days after the date of publication of the final rule implementing Amendment 5. Only vessel owners, including those currently holding Mau Zone open access permits, who apply and are eligible for Mau Zone limited access permits would be allowed to participate in the new Mau Zone limited access program. Holders of existing Mau Zone permits who make a timely application for a limited entry permit will be allowed to fish in the Mau Zone pending final agency action on their applications.

The proposed rule also would revise certain provisions governing the Ho'omalulu Zone limited access program for housekeeping purposes only, such as moving the description of "qualifying landing" for initial Ho'omalulu Zone permit eligibility points and permit renewal from the *Definitions* section (§ 660.12) of subpart B (Western Pacific Fisheries - General) to subpart E (Bottomfish and Seamount Groundfish Fisheries).

The proposed rule also contains provisions for an appeal process involving the granting, denial, conditioning, or suspension of Ho'omalulu and Mau Zone permits. Appeals would be made to the NMFS Southwest Region Administrator who, in consultation with the Council, would decide the appeal in accordance with the FMP and implementing regulations. The appeals process would allow for informal hearings before a hearing officer.

Section 660.67(d)(3) of the current bottomfish regulations refers to 1985 and 1986 "control dates" for limiting access to the fisheries off the NWHI, Guam, and American Samoa. As a housekeeping action, NMFS proposes to remove this paragraph from the regulations because it is very unlikely the Council and NMFS will use such old control dates. With the establishment of a limited access program for the Mau Zone under Amendment 5, the entire NWHI bottomfish fishery would be under limited access regimes. The Ho'omalulu Zone, the other bottomfish zone in the NWHI, was established as a limited access program in 1989. Under section 305(a)(2)(B)(iii) of the Magnuson-Stevens Act, the Council may establish a CDP to provide access to a fishery for

a community consisting of residents descended from the aboriginal people indigenous to the area. Under Amendment 5, the Council would set aside two Mau Zone limited access permits for a CDP. Initially reserving 2 permits of the target number of Mau Zone permits (10) for a CDP is consistent with the estimated 20 percent of Hawaii's population descended from the indigenous people of Hawaii. This proposed rule would not implement the Western Pacific CDP or assign Mau Zone permits to a community. A community development plan must be prepared by an eligible community and be approved by the Council and the Secretary before the two reserved permits could be issued by NMFS. This description is provided here for background information only.

On June 3, 1998, a notice of availability of draft Amendment 5 was published in the **Federal Register** (63 FR 30180). At its 97th meeting held in July 1998, the Council approved draft Amendment 5 for submission to the Secretary for review and approval. On November 18, 1998, a notice of availability of Amendment 5, inviting comments from the public, was published in the **Federal Register** (63 FR 64033).

#### Classification

At this time, NMFS has not determined that Amendment 5 that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

NMFS considers an impact to be significant if it results in a reduction in annual gross revenues by more than 5 percent, an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business. NMFS considers a "substantial number" of small entities to be more than 20

percent of those entities affected by the regulation engaged in the fishery.

Sixteen vessels have participated in this fishery during the past 5 years (1994–mid 1998), all of which are small entities. This rule would impact these vessels differently, depending on whether or not they qualify for a limited entry permit. Initially, 14 of these 16 vessels will qualify for permits. If any of these vessels does not continue to actively participate in the fishery, it will lose its permit. NMFS anticipates that through such attrition the limited entry system will eventually include only 10 vessels.

NMFS anticipates that the impacts, if any, on the permitted vessels would be positive in that they would be able to continue fishing, but future influx of effort would be prohibited, and eventually capacity would be reduced. With an expected attrition rate of 10 percent per year, annual gross revenues per vessel are forecast to increase 29 percent by the year 2004 when the long-term target number of 10 vessels is reached. Two of the vessels that have participated in this fishery during the last 5 years would be excluded. The change in potential annual gross revenues for excluded vessels ranges from a loss of 64 percent, if no successful effort is exerted to replace Mau Zone catches, to a gain of up to 29 percent if these vessels replace their potential Mau Zone effort with pelagic handlining around Hawaii's seamounts.

As a variety of alternative fisheries are available to excluded vessels (including pelagic trolling, longlining, and handlining, as well as bottomfishing around the main Hawaiian Islands), no operator will be forced to cease business operations as a result of this action. There are no additional compliance costs (capital investments, operating costs, or recordkeeping requirements) associated with this action.

If the proposed rule is adopted, 2 (12.5 percent) of the 16 vessels that participated in this fishery during the past 5 years could experience significant economic impacts. In accordance with the standard adopted by NMFS on "substantial number" for purposes of the Regulatory Flexibility Act, because less than 20 percent of fishery participants may be negatively impacted, I have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 45 minutes for a Mau Zone limited access permit application, 2 hours for a permit appeal submission, and 1 hour for permit renewal exemption request per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. This proposed rule also restates information collection requirement already approved by OMB under control number 0648-0204. An application for a Ho'omalulu Zone limited access permit is estimated to take 2 hours for an initial application and 1 hour for an application for renewal.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to minimize the burden of the collection of information, including through use of automated collection of techniques or other forms of information technology.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 30, 1998.

#### Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

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

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

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

2. Section 660.12 is amended by removing the definitions of "Pacific Area Office", and "Qualifying landing", revising the definition of "Owner" and adding a definition of "Pacific Islands Area Office", to read as follows:

#### § 660.12 Definitions.

\* \* \* \* \*

*Owner*, as used in subparts C and D of this part and § 660.61(i)-(m), means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG-1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or territory

or the USCG for an undocumented vessel. As used in subpart F of this part and § 660.61(c)-(h), the definition of "owner" in § 600.10 of this chapter continues to apply.

*Pacific Islands Area Office* means the Pacific Islands Area Office, Southwest Region, NMFS (PIAO), located in Honolulu, Hawaii. The address and phone number may be obtained from the Regional Administrator, whose address is in Table 1 to § 600.502.

\* \* \* \* \*

3. Section 660.13 is amended by revising paragraphs (f), (g), and (i) to read as follows:

**§ 660.13 Permits and fees.**

\* \* \* \* \*

(f) *Fees.* (1) PIAO will not charge a fee for a permit issued under subpart D or F of this part, or for a Ho'omalulu Zone limited access permit issued under § 660.61.

(2) PIAO will charge a fee for each application for a Hawaii longline limited access permit (including permit transfers and permit renewals) and Mau 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 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 on 2400 local time on December 31.

\* \* \* \* \*

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

\* \* \* \* \*

4. Section 660.61 is revised 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 Ho'omalulu Zone permit and a Mau Zone permit at the same time.

(3) Mau Zone permits issued before the effective date of this rule become invalid 45 days after the date of publication of the final rule implementing Amendment 5, except that a permit issued to a person who submitted a timely application under paragraph (i) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalulu 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 § 660.13. (2) *Ho'omalulu Zone limited access permit.* In addition to an application under § 660.13(c), each applicant for a Ho'omalulu 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) Copies 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.* The PIAO will not accept applications for a new Mau Zone permit more than 45 days following the publication date of the final rule implementing Amendment 5. In addition to an application under § 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 Mau Zone; 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 Ho'omalulu limited access permits to new vessel owners.*

(1) A Ho'omalulu zone permit may not be sold or otherwise transferred to a new owner.

(2) A Ho'omalulu 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 Ho'omalulu 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) *Ho'omalulu Zone limited access permit renewal.* (1) A qualifying landing for Ho'omalulu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of bottomfish management unit species from the Ho'omalulu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from

the Ho'omalulu 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 Ho'omalulu Zone limited access permits.* The Regional Administrator may issue new Ho'omalulu Zone limited access permits under § 660.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho'omalulu Zone are able to support additional fishing effort.

(g) *Eligibility for new Ho'omalulu 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 Ho'omalulu 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) *Eligibility for new Mau Zone limited access permits* (1) The PIAO will issue an initial Mau Zone permit to a vessel owner who qualifies for at least three points under the following point system:

(i) An owner who held a Mau Zone permit on or before December 17, 1991, and whose permitted vessel made at least one qualifying landing of bottomfish management unit species on or before December 17, 1991, shall be assigned 1.5 points.

(ii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1991, shall be assigned 0.5 point.

(iii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1992, shall be assigned 1.0 point.

(iv) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1993, shall be assigned 1.5 points.

(v) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1994, shall be assigned 2.0 points.

(vi) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1995, shall be assigned 2.5 points.

(vii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1996, shall be assigned 3.0 points.

(viii) Before the PIAO issues a 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 § 660.61(h), a "qualifying landing" means any amount of bottomfish management unit species lawfully harvested from the Mau Zone 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 providing 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 subparagraph of paragraph (h)(1) 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 subparagraph. If a vessel had multiple owners during a time frame covered by one of the subparagraphs of paragraph (h)(1) of this section (including joint owners, partners, or shareholders of a corporate owner), the PIAO will assign the points for that subparagraph 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 generate 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).

(i) *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 § 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 apply to the PIAO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(j) *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 calendar 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 (j)(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 § 660.61(j).

(k) *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, and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and any other relevant considerations.

(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.

5. Section 660.62 is amended by revising paragraph (b), removing paragraph (c), and redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively to read as follows:

**§ 660.62 Prohibitions.**

\* \* \* \* \*

(b) Fish for or retain on board a vessel, bottomfish management unit species in the Ho'omalū Zone or Mau Zone without the appropriate permit, registered for use with that vessel, issued under § 660.13.

\* \* \* \* \*

6. Section 660.67 is amended by removing paragraph (d)(3) and adding new paragraph (e) to read as follows:

**§ 660.67 Framework for regulatory adjustments.**

\* \* \* \* \*

(e) *Five-year review.* The Council will conduct a comprehensive review on the effectiveness of the Mau Zone limited access program 5 years following implementation of the program. The Council will consider the extent to which the FMP objectives have been met and verify that the target number of vessels established for the fishery is appropriate for current fishing activity levels, catch rates, and biological condition of the stocks. The Council may establish a new target number based on the 5-year review.

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