

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 160811726–6987–01]

RIN 0648–XE809

**Pacific Island Fisheries; 2016–17 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 specifications; request for comments.

**SUMMARY:** NMFS proposes to specify an annual catch limit (ACL) of 318,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2016–17 fishing year, which began on September 1, 2016, and ends on August 31, 2017. If the ACL is projected to be reached, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year as an accountability measure (AM). The proposed ACL and AM support the long-term sustainability of Hawaii bottomfish.

**DATES:** NMFS must receive comments by November 16, 2016.

**ADDRESSES:** You may submit comments on the 2016–2107 annual catch limit (ACL), identified by NOAA–NMF–2016–0112, 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-2016-0112>, 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 Region (PIR), 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 an environmental analysis that describes the potential impacts on the human environment that could result from the proposed specification. The environmental analysis and other supporting documents are available at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Sarah Ellgen, NMFS PIR Sustainable Fisheries, 808–725–5173.

**SUPPLEMENTARY INFORMATION:** NMFS and the Western Pacific Fishery Management Council (Council) manage the 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). Title 50, Code of Federal Regulations, part 665 (50 CFR 665.4) requires NMFS to specify an ACL for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council. 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*).

NMFS proposes to specify an ACL of 318,000 lb of Deep 7 bottomfish in the MHI for the 2016–17 fishing year. The Council recommended the proposed ACL, based on a 2011 bottomfish stock assessment updated with three additional years of data, 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. An update to the 2011 NMFS bottomfish stock assessment estimated the overfishing limit for the MHI Deep 7 bottomfish stock complex to be 352,000 lb, which is 31,000 lb less than the estimated overfishing limit in the 2011 stock assessment. Based on this update, the Council recommended a three-year phased reduction of the ACL. NMFS prepared an environmental assessment dated March 17, 2016, of the Council’s three-year phased reduction of the ACL (“Specification of Annual Catch Limits and Accountability Measures for Main Hawaiian Islands Deep 7 Bottomfish Fisheries in Fishing Years 2015–16, 2016–17, and 2017–18”), which is available from [www.regulations.gov](http://www.regulations.gov). The proposed ACL of 318,000 lb for 2016–17 is the second annual reduction

in this phased approach, and is 8,000 lb less than the ACL that NMFS specified last year.

The ACL is associated with a 42 percent probability of overfishing, 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 this limit, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year, as an accountability measure (AM). In addition, if NMFS and the Council determine that the final 2016–17 Deep 7 bottomfish catch exceeds the ACL, NMFS would reduce the Deep 7 bottomfish ACL for the 2017–18 fishing year by the amount of the overage.

The fishery has not caught the specified limit in any year since 2011. NMFS does not expect the proposed ACL and AM specifications for 2016–17 to result in a change in fishing operations, or other changes to the conduct of the fishery that would result in significant environmental impacts. After considering public comments on the proposed ACL and AMs, NMFS will publish the final specifications.

**Classification**

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

This action is exempt from review under Executive Order 12866.

**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 these proposed specifications, 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 these proposed specifications.

NMFS proposes to specify an annual catch limit (ACL) of 318,000 lb for Main Hawaiian Islands (MHI) Deep 7 bottomfish for the 2016–17 fishing year, as recommended by the Western Pacific

Fishery Management Council (Council). NMFS monitors MHI Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If and when the fishery is projected to reach this limit, NMFS, as an accountability measure (AM), would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed ACL is 8,000 lb less than the ACL NMFS implemented for the 2015–16 fishing year, and 28,000 lb less than the ACL that NMFS implemented for 2011–12, 2012–13, 2013–14, and 2014–15. The AM will remain the same. Over the past five fishing seasons, highest reported annual landings, 309,485 lb, occurred during the 2013–2014 fishing year. NMFS does not expect the fishery to reach the limit during the 2016–17 fishing year, which began September 1, 2016, and ends August 31, 2017.

This rule would affect participants in the commercial and non-commercial fisheries for MHI Deep 7 bottomfish. During the 2015–16 fishing year, 368 fishermen reported landing 259,530 lb of MHI Deep 7 bottomfish. Based on available information, NMFS has determined that all vessels in the commercial and non-commercial fisheries for MHI Deep 7 bottomfish are small entities under the Small Business Administration's definition of a small entity. That is, 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, the small business size standard for commercial fishing (NAICS Code: 11411). 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.

As for revenues earned by fishermen from MHI Deep 7 bottomfish, State of Hawaii records report 328 of the 368 fishermen sold their MHI Deep 7 bottomfish catch. These 328 individuals sold a combined total of 240,183 lb (92.5 percent of reported catch) at a value of \$1,716,313. Based on these revenues, the average price for MHI Deep 7 bottomfish in 2015–16 was approximately \$7.15/lb. NMFS assumes that the remaining 40 commercial fishermen either sold no Deep 7 bottomfish or the State of Hawaii reporting program did not capture their sales.

Assuming the fishery attains the ACL of 318,000 in 2016–17, and using the 2015–16 average price of \$7.15/lb, the potential fleet wide revenue during 2016–17 is expected to be \$2,273,700 (or approximately \$2,103,173 under the assumption that 92.5 percent of catch is sold). If the same number of fishermen sell MHI Deep 7 bottomfish in 2016–17 as in 2015–16, each of these 328 commercial fishermen could potentially sell an average of 970 lb of Deep 7 bottomfish valued at \$6,932, if all Deep 7 bottomfish caught were sold. If 92.5 percent of all Deep 7 bottomfish that had been caught had been sold, then these 328 commercial fishermen could potentially sell an average of 897 lb of Deep 7 bottomfish valued at about \$6,412.

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.

In terms of scenarios immediately beyond the 2016–17 fishing year, three possible outcomes may occur. First, in

the event that 2016–17 catch does not reach 318,000 lb, the ACL will decrease by 12,000 lb for the 2017–2018 fishing year, as set by the multi-year specification. Second, if the fishery exceeds the ACL for the 2016–17 fishing year, NMFS would reduce the MHI Deep 7 bottomfish ACL for the 2017–18 fishing year by the amount of the overage, in addition to the 12,000 lb reduction for the 2017–18 fishing year. The last possible scenario is one where NMFS would prepare a new stock assessment or update that NMFS and the Council would use to set a new 2017–2018 ACL (without inclusion of any overage, even if catch exceeds ACL for the 2016–17 fishing year), although this is unlikely, since NMFS plans to undertake the next stock assessment in 2018.

Even though this proposed specification would apply to a substantial number of vessels, *i.e.*, 100 percent of the bottomfish fleet, NMFS does not expect the rule will have a significantly adverse economic impact to individual vessels. Landings information from the past five fishing years, suggest that Deep 7 bottomfish landings are not likely to exceed the ACL proposed for 2016–17. Therefore, pursuant to the Regulatory Flexibility Act, this proposed action would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: October 26, 2016.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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