

APPENDIX A: MEASURE TO ESTABLISH ELIGIBILITY CRITERIA FOR NEW ENTRY INTO THE NORTHWESTERN HAWAIIAN ISLANDS MAU ZONE LIMITED ACCESS PROGRAM

(This appendix was prepared by the staff of the Western Pacific Regional Fishery Management Council, the NMFS Pacific Islands Fisheries Science Center, and the NMFS Pacific Islands Regional Office)

SUMMARY

Amendment 5 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries 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) with initial permit eligibility 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. Amendment 5 also reserved one-fifth of the target number of permits for a Western Pacific Community Development Program (CDP).

The limited access system includes a “use it or lose it” provision that requires 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) 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 subsequently fell below the target level in 2001, the Council is now considering a mechanism to allow for new entry. 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. It provides a framework for issuance of future permits, pending clarification of issues associated with the NWHI Coral Reef Ecosystem Reserve and sanctuary designation. This 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 will also provide consistency between the existing management regime in the Ho’omaluku Zone (a limited access bottomfish fishery management area west of the Mau Zone) and the Mau Zone which preserves the long-term option of combining the Mau and Ho’omaluku 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 to distribute available permits. The Council chose the weighted point system as its preferred alternative at the 107th Council meeting (November 28 - December 1, 2000).

Under this alternative, the existing provisions of the limited access permit program would be maintained. However, if the number of permit holders falls below the target level, the following criteria would be used to identify new participants. Fishery participants 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, participants 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, they 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 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.

The Council considered three methods to issue available CDP permits. These are a weighted point system, a lottery, and limited transferability. Under all three alternatives CDP permit applicants (qualifying community organizations) would be subject to eligibility criteria as published in the Federal Register on April 16, 2002. These criteria are based on language in the Magnuson-Stevens Act and specify that to be eligible to participate in a Western Pacific Community Development Program, a community must:

- (1) be located in Western Pacific Region;
- (2) consist of community residents descended from aboriginal people indigenous to the Western Pacific Area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the Western Pacific;
- (3) consist of community residents who reside in their ancestral island homeland;
- (4) have knowledge of customary practices relevant to fisheries of the Western Pacific;
- (5) have a traditional dependence on fisheries of the Western Pacific; and
- (6) experience economic or other barriers that have prevented full participation in Western Pacific fisheries and, in recent years, have not had harvesting, processing or marketing capability sufficient to support substantial participation in fisheries in the area.

The Council chose the weighted point system as its preferred alternative for CDP permits at the

117th Council (February 11-13, 2003). Under this alternative, the point system detailed above would apply to CDP permit applicants as would the existing provisions of the limited access permit program, including non-transferable permits and the “use it or lose it” requirement.

Amendment 5 also created a fee system for issuance of Mau Zone permits. 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. Failure to pay the fee precludes the issuance of a Mau Zone permit. At this time, Ho’omalū Zone permit recipients are not required to pay fees for their permits. This regulatory adjustment would establish a fee system for Ho’omalū Zone permits to cover administrative costs.

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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
HPAC	Habitat Area of Particular Concern
MHI	Main Hawaiian Islands
MSA	Magnuson-Stevens 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. INTRODUCTION

1.1 Existing Regulations

The Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries in the Western Pacific Region became effective on August 27, 1986 (51 FR 27413). The FMP prohibits 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.

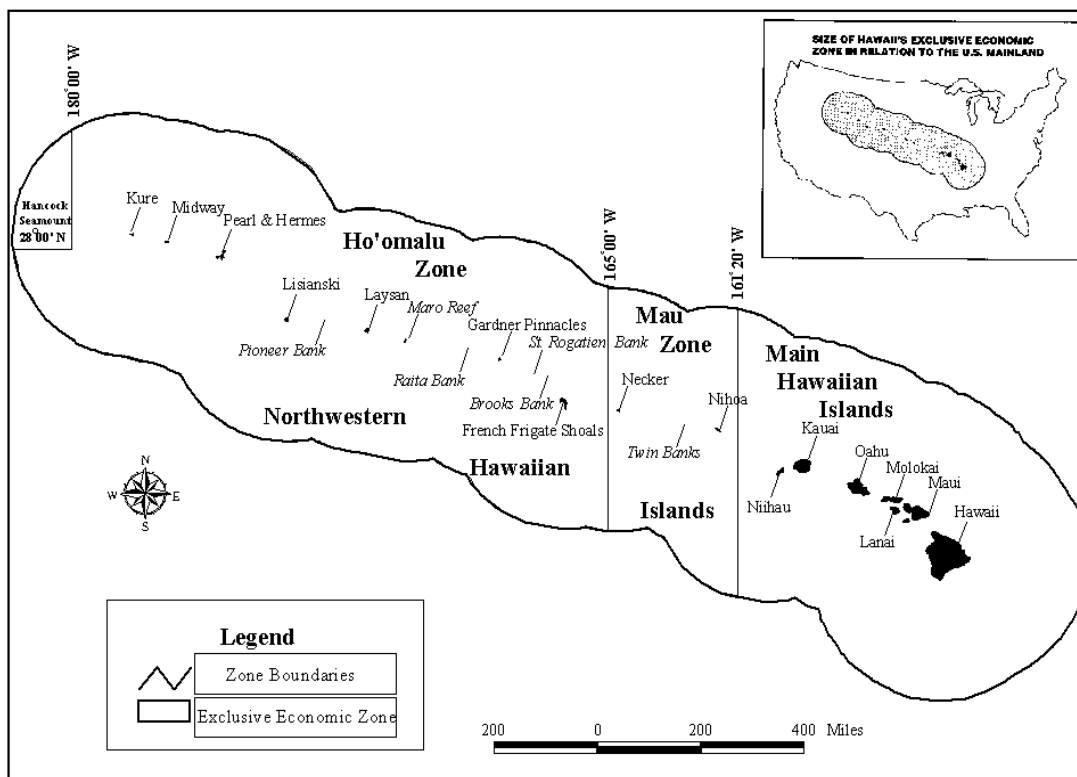
Amendment 1, implemented on November 11, 1987 (52 FR 38102), extends limited access permits as a management option to bottomfish fisheries in the EEZ surrounding American Samoa and Guam.

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 Ho'omaluku Zone and the Mau Zone (Figure A-1 shows the location and boundaries of these two zones). It also implemented a limited access system for the Ho'omaluku Zone. Although it also established a Mau Zone permit, the number of permit holders was not restricted except that Ho'omaluku 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 Ho'omaluku 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 A-1. Map of Hawaiian Archipelago and NWHI Management Areas



Amendment 5, implemented on May 28, 1999 (64 FR 22810), establishes a limited access program in the NWHI Maui 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 Maui 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 Maui 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. In addition, Amendment 5 reserves one-fifth of the target number of permits for a Western Pacific Community Development Program (CDP). This program was implemented on May 16, 2002 (67 FR 18512) and defines an eligible community as “a population of non-transient people descended from the aboriginal people indigenous to the area who share a common history based on social, cultural and economic interactions and a functional relationship sustained by participation in fishing and fishing related activities”. Finally, Amendment 5

includes a requirement that the Council develop criteria to allow new entry into the Mau Zone when the number of permitted vessels falls below 10 (the target number).

Amendment 6 addressed new requirements under the 1996 Sustainable Fisheries Act (SFA). Portions of the amendment that were immediately approved include designations of essential fish habitat and descriptions of some fishing communities. Those provisions became effective on February 3, 1999 (64 FR 19067). Remaining portions that were approved on August 5, 2003 (68 FR 46112) were provisions regarding Hawaii fishing communities, overfishing definitions, and bycatch.

In June 1998 the State of Hawaii implemented several management measures for bottomfish in the state waters of the Main Hawaiian Islands (Hawaii Administrative Rule, Chapter 13-94). Because bottomfish are managed under the FMP on an archipelagic-wide basis and because there are bottomfishing grounds in federal waters that are adjacent to state waters, these measures directly impact the stocks managed under the Bottomfish FMP. The new rules apply to seven species of bottomfish and include gear restrictions, bag limits for non-commercial fishermen, closed areas, and a requirement that all bottomfishing vessels be registered with the state.

Of relevance to the management of the NWHI bottomfish fishery is the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHI Reserve), established December 4, 2000 through Executive Order (EO) 13178 (65 FR 76903), as modified by EO 13196 on January 18, 2001 (66 FR 7395). The NWHI Reserve is managed by the Department of Commerce under the National Marine Sanctuaries Act. The EO calls for the Secretary of Commerce to initiate the process to designate the NWHI Reserve as a National Marine Sanctuary. The public scoping associated with that process began in April, 2002.

A number of FMP amendments and framework adjustments are in various stages of preparation and approval. Although they have not been approved by the National Marine Fisheries Service (NMFS) or implemented through regulations, the following descriptions give an indication of the actions being proposed and considered.

Amendment 8 to the FMP would include the federal waters around the Commonwealth of the Northern Mariana Islands and the Pacific Remote Island Areas under the FMP and would designate 49 additional bottomfish species as BMUS.

A regulatory adjustment to the FMP would suspend the minimum landing requirements for annual permit renewal in the NWHI Hoomalu and Mau Zone limited access programs.

Amendment 9 to the FMP would prohibit vessels greater than 50' in length overall from targeting Bottomfish Management Unit Species within 50 miles of Guam, and would require these vessels to obtain federal permits and to submit federal logbooks.

1.2 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 or amendment is submitted to the Secretary of Commerce for review and approval. If the plan or amendment is approved, NMFS implements it through Federal regulations, which authorizes the conduct of administration, monitoring and enforcement activities. For further information, contact:

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1.3 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.

Date	Meeting (Location)/Distribution	Published Notice
	Joint Plan Team/Advisory Panel (*HNL) Task force, mailing	**FR, ***HNA,
	74 th SSC, public meeting (HNL)	FR, HNA,
	104 th Council meeting (Maui) hearing	FR, HNA, Maui Tribune
	107 th Council meeting (HNL) hearing	FR, HNA

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

October 10-12, 2002	Advisory Panel, public meeting	FR, HNA
October 10, 2002	81 st SSC, public meeting	FR, HNA
October 17, 2002	115 th Council meeting (HNL)	FR, HNA
February 13, 2003	117 th Council meeting (Saipan)	FR, HNA, Marianas Variety

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

1.4 List of Preparers

This framework regulatory adjustment was prepared by (listed alphabetically within agencies):

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2. Purpose and Need for Action

2.1 Issues for Resolution

A limited access system for the Mau Zone was implemented in 1999, pursuant to Amendment 5 (described in Section 1.4.1). Because access had not previously been restricted, by that time more than 80 Mau Zone permits had been issued. However, only 37 permits had been actually used. On an individual vessel basis costs tended to exceed Mau Zone 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 10 permits and a methodology to steadily reduce the number of outstanding permits to the target level. It established criteria², based on past participation in the

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:

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. This amendment also reserved 20 percent of the long-term target number of limited access permits for a Western Pacific Community Development Program.

The number of vessels fishing in the Mau Zone varied from 4 to 12 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 to 20. In 2001, the number of vessels participating in the fishery dropped down to 6. It is unclear whether all of these vessels will continue to qualify for permits. Prior to establishment of the Mau Zone’s limited entry program, regular turnover supported higher aggregate participation. The program’s “use or lose it” provision, has led to attrition with the result that fishery participation is below its target level. Personal interviews with participants in NWHI bottomfish fishery indicate that the uncertainty created by the process to establish a Reserve and a Sanctuary in the NWHI may be a factor contributing to this attrition. Amendment 5 anticipated this contingency. It directs the Council to review the limited entry program annually and to develop criteria for new participants to enter the fishery. This regulatory adjustment proposes the development of such a mechanism within the framework provisions of the FMP.

The Magnuson-Stevens Act provides for the establishment of a Western Pacific Community Development Program for any fishery under the authority of the Council. This provision was made to address concerns that communities consisting of descendants of indigenous peoples in the Western Pacific Region have not been appropriately sharing in the benefits from the region's fisheries. The Council and the Secretary, respectively, have discretion to develop and approve programs for eligible communities for the purpose of enhancing access to the fisheries under the authority of the Council. The Magnuson-Stevens Act also specifies eligibility criteria for communities to be able to participate in a Western Pacific Community Development Program.

Through Amendment 5 to the Bottomfish FMP, the Council designated a Community Development Program for the Mau Zone fishery to enhance access by eligible communities. The Council noted that communities consisting of people descended from the aboriginal people indigenous to the Hawaiian islands have long been among the most economically disadvantaged in the State.

In determining how many permits should be reserved for the program, the Council took into

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- 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 points; 1991 - 0.5 point.

account that approximately 20 percent of the State of Hawaii’s population consists of “Hawaiians” or “Part Hawaiians” (Department of Business, Economic Development and Tourism 1995). Based on this initial guideline, the Council recommended that the number of permits reserved for the community development program be 20 percent of the target number of permits for the Mau Zone.

This regulatory adjustment, with the approval of the Secretary, will establish the principles and procedures for a Western Pacific Community Development Program for the Mau Zone fishery in accordance with the Magnuson-Stevens Act, as well as codify a process by which new participants could enter the Mau Zone fishery.

3. 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 and to include vessels fishing under CDP permits. 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.* The proposed management measures will provide a process to allow new entrants to the small-scale commercial fishery in the Mau Zone and to include participants under the Western Pacific Community Development Plan.
- 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 vessel target level is calculated to prevent over-capitalization, maintenance of participation at optimal levels will contribute to this objective.

Another important goal, related to National Standard 4 of the MSA, 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. In addition, providing a mechanism for entry by CDP participants will ensure avenues for participation by indigenous people who may have had difficulty entering the fishery otherwise. Again, this regulatory adjustment would codify a process by which new participants (up to the target level) could enter the Mau Zone fishery.

4. MANAGEMENT ALTERNATIVES

4.1 Alternatives for Issuing non-CDP Permits

In addition to the no-action alternative, the Council considered four alternatives for Mau Zone new entry criteria to maintain non-CDP participation at the target level. Alternative A is the no action alternative while Alternatives B and C provide mechanisms for scenarios in which non-CDP participation is below the target level. Alternatives D and E do not provide avenues for increased participation but rather assume that non-CDP participation is at the target level and provide methods to maintain this level. As of December 2002, non-CDP participation was below the target level (see Section 2.1).

Non-CDP Alternative A. No Action: The Council would not establish management measures to maintain the number of Mau Zone fishery non-CDP participants at their target level.

Non-CDP Alternative B. A weighted point system (the preferred alternative): Under this alternative, applicants would be ranked based on the total number of points for which they qualify. For 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) One point for each qualifying year during which they landed at least 2,500 lbs of BMUS from the MHI.
- 2) Two 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.

Each applicant would be ranked based on their total points and, starting with the highest point holder, available permits would be awarded successively based on rank. This selection process would be used if less than the target level of vessels re-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 non-CDP participants that re-qualify under the “use it or lose it” provision and are issued permits, and the target number of participants for non-CDP permits.

Non-CDP Alternative C. 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 permits to fall below the FMP target number of participants for non-CDP permits. Available permits would be awarded to applicants based on a NMFS-conducted lottery, with no restrictions on applicant eligibility or qualifications.

Non-CDP Alternative D. Limited transferability: This alternative would be appropriate for scenarios in which the number of non-CDP participants is already at the target level. Under this alternative, a permit holder would be able to transfer his permit to a qualified applicant in a pool of “qualified non-CDP applicants” The same weighted point system described above would be used to establish a pool of qualified non-CDP applicants. A minimum number of points would be required to qualify for the pool. This point minimum would be set so that only fishermen with a record of historical participation and experience in MHI and/or NWHI fisheries would qualify. Under this alternative, permit holders could freely transfer permits to 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).

Non-CDP Alternative E. 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 applicants. This alternative is appropriate for scenarios in which the number of non-CDP participants is already at the target level.

4.2 Alternatives For Issuing CDP Permits

General CDP Applicant Requirements Under all alternatives community organizations that are recognized by federal, state or local government agencies would qualify to apply for CDP permits. CDP permit applicants (qualifying community organizations) would then have to meet established eligibility criteria as published in the Federal Register on April 16, 2002. To be eligible to participate in a Western Pacific Community Development Program a community must:

- (1) be located in Western Pacific Region;
- (2) consist of community residents descended from aboriginal people indigenous to the Western Pacific Area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the Western Pacific;
- (3) consist of community residents who reside in their ancestral island homeland;
- (4) have knowledge of customary practices relevant to fisheries of the Western Pacific;
- (5) have a traditional dependence on fisheries of the Western Pacific; and
- (6) experience economic or other barriers that have prevented full participation in Western Pacific fisheries and, in recent years, have not had harvesting, processing or marketing capability sufficient to support substantial participation in fisheries in the Area.

As part of their CDP permit application package, qualifying community organizations would need to submit a “Community Development Plan” and designate the community member who would hold and fish under the permit. The Community Development Plan must describe how the community organization meets the eligibility criteria listed above and shall also address each of the following items:

- A. Community Organization Information – provide community organization information, including name, charter, bylaws, board members, and a designated community member who would hold and fish under the permit;
- B. Plan Description – describe the community organization’s plan for using the CDP permit, including a general description of the vessel and equipment that would be used, including fishing gear, navigational equipment, safety equipment and operating patterns (number of trips etc.);

C. Anticipated Benefits – describe the anticipated benefits to the community organization, general public or other entities that may be affected. Include a description of how the plan would increase community access, either directly or indirectly, to fishery resources.

The Council considered five alternatives for issuing CDP permits for the Mau Zone fishery. Alternative A is the no action alternative while Alternatives B and C provide mechanisms for scenarios in which CDP participation is below the target level. Alternatives D and E do not provide avenues for increased participation but rather assume that CDP participation is at the target level and provide methods to maintain this level. As of March 2003, there were no CDP participants.

CDP Alternative A. No action: The Council would not establish management measures to issue CDP permits for the Mau Zone fishery.

CDP Alternative B. A weighted point system (preferred alternative): This alternative is very similar to the weighted point system alternative for non-CDP permits in that applicants would be ranked based on the total number of points for which they qualify and starting with the highest point holder, available permits would be awarded successively based on rank. In the case of CDP applicants, only points accrued to the designated community member who will hold the permit would be considered. Similarly to non-CDP permits, for any one year points would be assigned under one of the two methods below but not both. The designated community member (who may or may not have owned a vessel) landing BMUS would be given points based on the following criteria:

- 1) One point for each qualifying year during which they landed at least 2,500 lbs of BMUS from the MHI.
- 2) Two 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 CDP participants that re-qualify under the “use it or lose it” provision and are issued permits, and the targets for CDP permits. CDP permit holders will be subject to the same use-it-or-lose-it requirement, transfer, lease, charter and sale restrictions, vessel replacement restrictions, workshops on endangered and threatened species, permit fee and reporting and record keeping requirements as apply to non-CDP permit holders.

CDP Alternative C. 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 permits to fall below the FMP target number for CDP permits. Available permits would be awarded to applicants based on a NMFS-conducted lottery, with no restrictions on applicant eligibility or qualifications beyond those general CDP

applicant requirements described above.

CDP Alternative D. Limited transferability: This alternative would be appropriate for scenarios in which the number of CDP participants is already at the target level. Under this alternative, a CDP permit holder would be able to transfer his permit to a qualified applicant from a pool of “qualified CDP applicants”. To be considered for inclusion in the pool of qualified CDP applicants, community organizations would have to meet the general CDP applicant requirements described above. In addition, as part of their CDP permit application package, qualifying community organizations would need to submit a longer “Community Development Plan” than that required under other CDP alternatives. Under this alternative, the Community Development Plan must describe how the community organization meets the eligibility criteria listed above and also address each of the following items:

- A. Community Organization Information – provide community organization information, including name, charter, bylaws, board members, and a designated community member who will hold and fish under the permit;
- B. Plan Description – describe the community organization’s plan for using the CDP permit, including a general description of the vessel and equipment that will be used, including fishing gear, navigational equipment, safety equipment and operating patterns (number of trips etc.);
- C. Anticipated Benefits – describe the anticipated benefits to the community organization, general public or other entities that may be affected. Include a description of how the program will increase community access, either directly or indirectly, to fishery resources.
- D. Program Objectives - provide information on the short and long-term goals of the program.
- E. Proposed Budget and Human Resources – provide a program budget. Include estimates of total program costs and details on significant budget categories. Describe program personnel needs, including any necessary special expertise or experience.
- F. Plan Design and Approach - explain in detail how the plan will meet the program’s goals. Describe the extent and manner in which community members would be involved in carrying out the plan.
- G. Experience and Qualifications of Personnel - describe the technical, managerial and organizational skills of community members or others who will be involved in carrying out the plan. Include past experience and accomplishments in relation to the program as necessary.
- H. Program Evaluation - describe how the program’s success would be evaluated in terms of meeting its objectives.

Under this alternative, CDP applicants would be ranked based on their Community Development Plans. Evaluation criteria would include the short and long-term goals of the program, the potential for the plan to achieve the program’s objectives, the degree to which community members would be involved in carrying out the plan, and the likely effectiveness of the proposed procedures and criteria to monitor and evaluate the success or failure of the Program in terms of meeting its objectives. Applying community organizations would be awarded points based on the

above evaluative criteria and a minimum number of points would be required to qualify for the pool of qualified CDP applicants.

CDP permit holders could then freely transfer permits to CDP 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).

CDP Alternative E. Full transferability: This alternative would also be appropriate for scenarios in which the number of CDP participants is already at the target level. Under this alternative, a CDP permit holder would be able to transfer their permit to any community organization that met the general CDP applicant requirements described above.

4.3 Permit Fees for the Ho'omalū Zone

A fee system for Ho'omalū Zone permits will be established through this regulatory adjustment, making the Ho'omalū and Mau Zones consistent in that regard. Similar to Mau Zone permits, a fee will be charged for each Ho'omalū 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 Ho'omalū Zone permit.

4.4 CDP Permit Review Process

The solicitation and review of CDP permit applications will be consistent with existing procedures used for NWHI Ho'omalū Zone limited entry permits. However, if problems or questions arise NMFS will consult with the Council. The Council may request the Bottomfish Advisory Review Board to consider the issue(s) and recommend action.

5. CONSISTENCY WITH 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. This framework regulatory adjustment's consistency 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 for participation in the Mau Zone limited access program. This target is intended to prevent overfishing and it is estimated that participant target

levels 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 net 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 adjustment concerns bottomfish stocks in the NWHI, which includes both the Mau and Ho’omalulu Zones. This action would lead to greater consistency in regulations between the two zones with increased management of this stock as a unit.

- (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, fairness and equity have been the primary social 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 vessels established in Amendment 5 takes into account the importance of the bottomfish fishery to fishing communities in Hawaii by allowing appropriate participation while preventing overfishing. This regulatory adjustment proposes measures to maintain total participation at the target level while allowing for the entry of new participants under a Western Pacific Community Development Plan.

- (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. 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 as compared to others.

6. RELATIONSHIP TO OTHER APPLICABLE LAWS AND PROVISIONS OF THE MSA

6.1 National Environmental Policy Act

6.1.1 Purpose and Need of Action

The purpose and need for this action are described in Section 2 of this appendix (pg. A-11).

6.1.2 Alternatives Considered

The range of management alternatives considered by the Council for this action are described in Section 4 of this appendix (pg. A-13).

6.1.3 Affected Environment Given Cumulative Impacts to Date

See Chapter 3 of the FEIS for a detailed description of the affected environment given cumulative impacts, as well as a description of the bottomfish fishery and fishing sectors.

6.1.4 Environmental Impacts of the Alternatives

6.1.4.1 Biological and Ecological Impacts

6.1.4.1.1 Impacts on Target and Non-Target Stocks

All of the alternatives are intended to maintain the number of CDP and non-CDP Mau Zone permit holders at the FMP participant target levels 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 limited entry 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 the potential for negative biological and 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 likely adversely 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's 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 may achieve a higher per vessel CPUE and catch rates near MSY could be reached sooner. However it is unlikely that fewer than 10 vessels will actually harvest the entire MSY. By the same token, fewer vessels would be anticipated to result in a lower potential for interactions with protected species, less bycatch, and reduced incidental harvest of non-BMUS fish stocks.

6.1.4.1.2 Impacts on Essential Fish Habitat

None of the alternatives is expected to have adverse impacts on essential fish habitat (EFH) or habitat areas of particular concern (HAPC) for species managed under the Pelagics, Bottomfish

and Seamount Groundfish, Precious Corals, or Crustaceans Western Pacific Fishery Management Plans. EFH and HAPC for these species groups have been defined as presented in Table A-1. None of the alternatives is likely to adversely affect EFH or HAPC for any managed species as they are not likely to lead to substantial physical, chemical, or biological alterations to the habitat of these species or their prey. For the same reason, none of the alternatives is expected to cause substantial damage to the ocean or coastal habitats.

Table A-1. Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) for species managed under the FMPs for the Pelagics, Bottomfish and Seamount Groundfish, Precious Corals, Crustaceans, and Coral Reef Ecosystems of the Western Pacific Region.

SPECIES GROUP (FMP)	EFH (juveniles and adults)	EFH (eggs and larvae)	HAPC
Pelagics	water column down to 1,000 m	water column down to 200 m	water column down to 1,000 m that lies above seamounts and banks
Bottomfish	water column and bottom down to 400 m	water column down to 400 m	all escarpments and slopes between 40-280 m, and three known areas of juvenile <i>opakapaka</i> habitat (2 off Oahu and 1 off Molokai)
Seamount Groundfish	(adults only:) water column and bottom from 80 to 600 m, bounded by 29° - 35° N and 171° E - 179° W	(including juveniles:) epipelagic zone (0 to ~200m), bounded by 29° - 35° N and 171° E - 179° W	not identified
Precious Corals	Keahole, Makapu'u, Kaena, Wespac, Brooks, and 180 Fathom gold/red coral beds, and Miloli'i, S. Kauai and Au'au Channel black coral beds	not applicable	Makapu'u, Wespac, and Brooks Bank beds, and the Au'au Channel
Crustaceans	bottom habitat from shoreline to a depth of 100 m	water column down to 150 m	all banks within the Northwestern Hawaiian Islands with summits less than 30 m
Coral Reef Ecosystems	water column and benthic substrate to a depth of 100 m	<i>water column and benthic substrate to a depth of 100 m</i>	<i>all Marine Protected Areas identified in FMP, all PRIA, many specific areas of coral reef habitat (see FMP)</i>

Note: All areas are bounded by the shoreline and the outer boundary of the EEZ unless indicated otherwise.

6.1.4.1.3 Impacts on Biodiversity and Ecosystem Functions

Although impacts of the fishery on biodiversity and ecosystem function are low, they can be

assumed to occur in rough proportion to the amount of fleet-wide catch.

The entrance of new participants under any of the mechanisms identified would not be expected to lead to increases in fishing effort or catch levels beyond those previously considered when the target level of permits was determined. In addition, the preferred alternative's new entry criteria (priority based on historical participation) for both CDP and non-CDP applicants is not anticipated to lead to changes in fishing operations that would alter significantly harvests or bycatch composition. For these reasons, the preferred alternative is not anticipated to result in negative impacts to the area's biodiversity and ecosystem function.

6.1.4.1.4 Impacts on Sea Turtles

Given that this fishery has no interactions with sea turtles, and the alternatives considered here are not expected to change historical fishing patterns or operations, it is not anticipated that any alternative considered here will lead to adverse impacts on sea turtles.

6.1.4.1.5 Impacts on Marine Mammals

Although fishery impacts with marine mammals are rare, they can be assumed to occur in rough proportion to the amount of fleet-wide fishing effort. With the exception of the no action alternative which would lead to reduction in fishing effort, all alternatives are designed to maintain fishing participation at the FMP target level. Historical data and the 2002 Biological Opinion on the fishery indicate that this level of fishing effort is not likely to jeopardize the continued existence of Hawaiian monk seals or result in the destruction or adverse modification of their habitat. The 2002 Biological Opinion also concluded that the probability of an encounter between other marine mammals and the bottomfish fishery is extremely low and that the fishery, as managed under the FMP, is not likely to adversely affect these species (NMFS 2002b). Preparation of an incidental take statement in compliance with Section 101 (a) (5) is currently under preparation by NMFS.

6.1.4.1.6 Impacts on Seabirds

Given that this fishery has had very few interactions with seabirds, and the alternatives considered here are not expected to change historical fishing patterns or operations, it is not anticipated that any alternative considered here will lead to adverse impacts on seabirds.

6.1.4.2 Economic, Social and Cultural Impacts

6.1.4.2.1 Impacts on Fishery Participants

Impacts on Non-CDP Participants

Impacts on current fishery participants (who are all non-CDP permit holders) are anticipated to be negligible under all alternatives as none would impose additional requirements on current participants (e.g. they would continue fishing under all alternatives). Under the no action alternative, participation and thus fishing effort could be severely reduced over time and this could potentially increase catch rates for remaining participants. However, due to the already low levels of effort, it is unlikely that further reductions will have significant impacts on average catch rates. Clearly appropriate action alternatives (depending on current participation levels) would also provide benefits to potential new non-CDP participants as they would allow new entry to the fishery, while the no action alternative would not.

Impacts on CDP Participants

Impacts on potential new CDP participants and their associated communities would be most positive under CDP Alternatives B and C as these would allow the issuance of the first CDP permits for this fishery. This would provide the benefit of increased access to fishery resources by qualified communities. Alternative D (limited transferability) would be inappropriate at this time as there are no existing CDP permits to transfer. Alternative A (no action) would provide no benefits to potential new CDP participants.

6.1.4.2.2 Impacts on Public Health and Safety

All alternatives limit regulation to fishery participants, with no foreseeable impacts on the health and safety of the public at large. However, alternatives that would distribute permits based on a lottery could potentially result in permits being issued to inexperienced individuals who lack the training, experience, or equipment to safely fish in this remote fishery. This criticism could also apply to CDP Alternative D (limited transferability) as it would establish a transfer pool based only in part on the qualifications and experience of the organization's personnel. In contrast, the preferred alternative (a weighted point system for both non-CDP and CDP permits) would prioritize new entrants based on their historical participation (and thus experience) in the NWHI or MHI bottomfish fisheries. Although no alternatives require that these permit holders actually operate the vessels registered to their permits, it is believed that permit holders will supervise the operations of their vessels and lend their expertise to their crew, even if they don't physically participate in all fishing trips.

6.1.4.2.3 Impacts on Markets and Consumers

Due to the inevitable demise of the fishery under the no-action alternative, any of the action alternatives would result in greater levels of fleet-wide catch than the no-action scenario, with an attendant greater supply of fresh bottomfish products to local markets. The relative effect of each of the action alternatives is likely to be similar as all seek to either increase or maintain participation at target levels.

In recent years there does not appear to have been a strong relationship between local bottomfish production and price, possibly in part because of the increasing contribution (about 40%) of

imported bottomfish products to the local market (WPRFMC 2002b). It is therefore unlikely that impacts on local supply would result in a substantial impact on prices. However, replacement of the supply of fresh Hawaii bottomfish with imported fish of lesser quality represents a significant loss of consumer surplus. The importance of this product to Hawaii's white-table restaurants was recently emphasized in an overview of this fishery. In this review, internationally renowned chef Alan Wong stated that "Bottomfish - especially the prime snappers 'opakapaka and onaga - are some of our most popular signature Hawaii Regional Cuisine dishes" (Hawaii Fishing News, December 2002).

The limited access program implemented under Amendment 5 was meant to improve economic performance in the Mau Zone fishery. It may be that the no action alternative, if it resulted in further attrition could lead to increased catch rates and supplies. However with no mechanism for new entrants, these remaining participants would be the last. Further, it is not clear that catch competition occurs even at target levels.

6.1.4.3 Cumulative Impacts

The impacts described throughout Section 3.1.2 have been assessed in the context of all known existing factors and impacts on the environment. In the short-run, the no action alternative is not likely to result in changes to the ongoing operation of the fishery. In the long-run this alternative will result in the demise of the fishery as participants age and are not replaced by new entrants. All other alternatives are designed to allow the fishery to reach and maintain participation at target levels and would therefore avoid this long-run outcome. Direct effects of the preferred alternative include increased fishing effort as the fishery increases from the current six participants to ten. As discussed in Section 3.1.2.1.1, this level of fishing effort is not anticipated to lead to negative impacts on target or non-target stocks. Indirect effects of the preferred alternative include an increased supply of locally caught bottomfish, with little price impacts anticipated. In addition, all action alternatives would result in establishment of entry criteria for CDP participants. This will further the objectives of the Western Pacific Community Development Plan, including fostering and promoting the involvement of such communities in western Pacific fisheries. However, the effects of the alternatives would depend in part on the effects of the NWHI Reserve restrictions and the outcome of the process to designate the NWHI Reserve as a National Marine Sanctuary, both of which are uncertain.

6.1.5 Reasons for Selecting the Preferred Alternative

The preferred alternative (a weighted point system for both non-CDP and CDP permits) was selected 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 carefully balanced with the desire to maintain a target level of participation and encourage active use of permits. The preferred alternative is structured to require evidence of historical participation for entry into the fishery, and to require continued active participation to qualify for permit renewal. Because they would both allow new entrants that have no past experience, and therefore no stake, in the fishery, full transferability and lottery assignment are the two least

desirable alternatives from this perspective.

Although full transferability would not require historical fishery participation, limited transferability could provide benefits by creating a mechanism for exiting or relatively inefficient permit holders to leave the fishery by selling their permits, presumably to the highest bidder who would be likely to have the most efficient production costs. This would not only provide some compensation to exiting permit holders, it could also lead to more efficient fishery operations over time. However, limited transferability was rejected by the Council as it does not ensure that permits are awarded (transferred) to the applicant with the longest record of participation (highest number of points), rather it only requires that permits are awarded (transferred) to one of a pool of applicants - each of whom are above a threshold number of points. For the same reason, participants in this fishery have consistently rejected management measures that would allow permits to be transferred

Although the closer of the two NWHI management areas, the Mau Zone is remote and raises safety concerns for fishing vessels and crew. The screening function provided by the historical participation requirement of the preferred alternative would ensure that permit holders have basic fishing and seamanship experience. This would enhance vessel and crew safety and fishing productivity as compared to the full transferability and lottery alternatives, which do not include this requirement.

The preferred alternative also addresses participation by indigenous people as it would establish criteria by which CDP permits can be allocated. This would will allow those permits to be used, thus furthering the objectives of the Western Pacific Community Development Program, including increasing community access to these fishery resources.

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 action. 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

The CZMA requires a determination that a proposed management measure has no effect on the land, water uses, or natural resources of the coast zone, or is consistent to the maximum extent practicable with an affected state's approved coastal zone management program. A copy of this document will be submitted to the appropriate state government agency in Hawaii for review and concurrence with a determination made by the Council that the proposed measure is consistent, to the maximum extent practicable, with the state's coastal zone management program.

6.4 Endangered Species Act

The Endangered Species Act of 1973 (ESA), as amended (Public Law 93-205; 87 Stat. 884) prohibits the taking of endangered species except under limited circumstances. In 1986, 1991, and 2002 formal Section 7 consultations were completed for the FMP. The results of the consultations are Biological Opinions as to whether the action – in this case, management of the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region according to the FMP – is likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species.

Existing regulations require NWHI bottomfish fishermen to report interactions with protected species. Amendment 4 to the FMP authorized the Regional Administrator to place observers on board bottomfish vessels if needed. Vessel operators are also required to attend a NMFS protected species workshop as a condition of receiving a permit.

Species listed as endangered or threatened under the ESA that have been observed in the area where NWHI bottomfish vessels operate are as follows:

Marine Mammals	Status
Hawaiian monk seal (<i>Monachus schauinslandi</i>)	Endangered
Humpback whale (<i>Megaptera novaeangliae</i>)	Endangered
Sperm whale (<i>Physeter macrocephalus</i>)	Endangered
Right whale (<i>Eubalaena glacialis</i>)	Endangered
Blue whale (<i>Balaenoptera musculus</i>)	Endangered
Fin whale (<i>Balaenoptera physalus</i>)	Endangered
Sei whale (<i>Balaenoptera borealis</i>)	Endangered
Sea Turtles	Status
Green turtle (<i>Chelonia mydas</i>)	Threatened/Endangered
Hawksbill turtle (<i>Eretmochelys imbricata</i>)	Endangered
Leatherback turtle (<i>Dermochelys coriacea</i>)	Endangered
Loggerhead turtle (<i>Caretta caretta</i>)	Threatened

Olive Ridley turtle (*Lepidochelys olivacea*)

Threatened/Endangered

Seabirds

Status

Short-tailed albatross (*Phoebastria albatrus*)

Endangered

The only endangered or threatened species that has been documented to interact with the NWHI bottomfish fishery is the Hawaiian monk seal. The status of the Hawaiian monk seal population and its relationships with the NWHI bottomfish fishery is briefly described in Sections 3.1.1.1.6 and 3.1.2.1.6. The 2002 Biological Opinion (NMFS 2002b) found that the bottomfish fishery – as managed under the current FMP – is not likely to jeopardize the continued existence of the Hawaiian monk seal or result in the destruction or adverse modification of its critical habitat. Additional information on the status of the monk seal population and its relationships with the bottomfish fishery can be found in the DEIS for the FMP (WPRFMC 2004).

Although the 2002 Biological Opinion anticipates take of Hawaiian monk seals in the bottomfish fishery, it does not provide an incidental take statement. Once a take statement is authorized under the MMPA, the Biological Opinion will be amended to include an incidental take statement (NMFS 2002b).

The 2002 Biological Opinion (NMFS 2002b) found that the bottomfish fishery – as managed under the current FMP – is not likely to adversely affect humpback, sperm, right, blue, fin, or sei whales, or hawksbill, leatherback, loggerhead, olive ridley, or green turtles (Sections 3.1.1.1.5 and 3.1.2.1.5).

In October 2003 NMFS reinstated its NWHI Bottomfish Observer program, as of June 29, 10 trips (out of a total of 52 trips) have carried federal observers with no interactions with sea turtles, monk seals, other marine mammals observed or other threatened or endangered species observed.

The short-tailed albatross is a relatively rare visitor to the NWHI and no sightings or interactions with bottomfish vessels have been documented. In addition, the alternatives considered here are not expected to change historical fishing patterns or operations. Therefore, none of the alternatives are expected to have any adverse impacts on short-tailed albatrosses (Sections 3.1.1.1.7 and 3.1.2.1.7).

Although fishery interactions with endangered species are rare, it can be that they occur in rough proportion to the amount of fishing effort. The proposed action could result in either greater or lower fleet-wide rates of fishing effort than in the no-action scenario, however because it would remove the annual permit renewal landing requirements, the resulting future level of overall fishing effort is likely to be even less than those of recent years, so the action is not likely to adversely impact any endangered or threatened species (Sections 3.1.1.1.5 - 3.1.1.1.7, and Sections 3.1.2.1.5 - 3.1.2.1.7).

It is anticipated that NFMS will conduct an informal consultation on this rule under Section 7 of

the Endangered Species Act.

6.5 Marine Mammal Protection Act (MMPA)

With the exception of the Hawaii-based longline fleet, all fisheries in the waters around Hawaii, including the bottomfish fishery, are classified as Category III under Section 118 of the MMPA (62 FR 28657, 27 May 1997), meaning that the fisheries were determined by NMFS “to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals” (50 CFR 229.2). Vessel owners and crew that are engaged only in Category III fisheries may incidentally take marine mammals without registering or receiving an Authorization Certificate under the MMPA, but they are required to: 1) report all incidental mortality and injury of marine mammals to NMFS, 2) immediately return to the sea with minimum of further injury any incidentally taken marine mammal, 3) allow vessel observers if requested by NMFS, and 4) comply with guidelines and prohibitions under the MMPA when deterring marine mammals from gear, catch, and private property (50 CFR 229.5, 229.6, 229.7).

Any species listed as endangered or threatened under the ESA, such as the Hawaiian monk seal, is considered to be depleted under the MMPA, and any incidental take of that species must be authorized under Section 101(a)(5) of the MMPA, subject to a determination by the Secretary of Commerce that any incidental mortality or serious injury will have a negligible impact on the affected species or stock and that a recovery plan has been developed or is being developed under the ESA for the species or stock. Such incidental take for the Hawaiian monk seal has not yet been authorized.

Species of marine mammals that are protected under the MMPA but not listed as threatened or endangered and that occur in the areas where bottomfish fisheries operate are as follows:

Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)
Rough-toothed dolphin (*Steno bredanensis*)
Risso’s dolphin (*Grampus griseus*)
Bottlenose dolphin (*Tursiops truncatus*)
Spotted dolphin (*Stenella attenuata*)
Spinner dolphin (*Stenella longirostris*)
Striped dolphin (*Stenella coeruleoalba*)
Melon-headed whale (*Peponocephala electra*)
Pygmy killer whale (*Feresa attenuata*)
False killer whale (*Pseudorca crassidens*)
Killer whale (*Orcinus orca*)
Pilot whale (*Globicephala melas*)
Blainsville’s beaked whale (*Mesoplodon densirostris*)
Cuvier’s beaked whale (*Ziphius cavirostris*)
Pygmy sperm whale (*Kogia breviceps*)
Dwarf sperm whale (*Kogia simus*)
Bryde’s whale (*Balaenoptera edeni*)

Of the above, only the bottlenose dolphin has been documented interacting with the bottomfish fishery by taking fish from hooks, as recorded during the 1990-1993 NWHI vessel observer program (Nitta 1999). Additional information on the status of bottlenose dolphin in the affected area is available in the DEIS for the FMP (WPRFMC 2004). Several sightings of spinner dolphin were made during the 1990-1993 observer program but no interactions were observed (Nitta 1999). No interactions with marine mammals have been observed by federal observers since NMFS reinstated the NWHI Bottomfish Observer Program in October 2003.

Although fishery interactions with marine mammals are rare, it can be assumed that they would occur in rough proportion to the amount of fishing effort. The proposed action could result in a either greater or lower fleet-wide rates of fishing effort than in the no-action scenario, but because it would remove the current permit renewal landing requirements the resulting future overall fishing effort is likely to be less than those of recent years, so the action is not likely to adversely impact any marine mammals (Sections 3.1.1.1.6 and 3.1.2.1.16).

6.6 Regulatory Impact Review and Regulatory Flexibility Act

In order to meet the requirements of Executive Order 12866 (E.O. 12866) the National Marine Fisheries Service requires that a Regulatory Impact Review (RIR) be prepared for all regulatory actions that are of public interest. This review provides an overview of the problem, policy objectives, and anticipated impacts of the action, and ensures that management alternatives are systematically and comprehensively evaluated such that the public welfare can be enhanced in the most efficient and cost effective way. In accordance with E.O. 12866, the following is set forth: (1) This rule is not likely to have an annual effect on the economy of more \$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) This rule is not likely to create any serious inconsistencies or otherwise interfere with any action taken or planned by another agency; (3) This rule is not likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; (4) This rule is not likely to raise novel or policy issues arising out of legal mandates, or the principles set forth in the Executive Order and; (5) This rule is not controversial. In addition, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA) requires government agencies to assess the impact of their regulatory actions on small businesses and other small organizations via the preparation of Regulatory Flexibility Analyses. An Initial Regulatory Flexibility Analysis and complete Regulatory Impact Review that examines the alternatives presented in this document are under preparation. A summary is provided here.

Implementation of new entry mechanisms for the Mau Zone bottomfish fishery is not anticipated to lead to negative economic impacts on current fishery operations or participants as they would not necessitate any changes to these operations and the level of catch competition at current or target levels is believed to be generally low.

Under Alternative A (no action), there would be no mechanism for potential new non-CDP or CDP participants to enter the fishery, either as a result of administrative procedures (a weighted point system or a lottery), or through permit transfers with their concurrent windfall profits for current permit holders. This would represent a loss of opportunity to potential participants who would not be allowed to enter the fishery.

Significant impacts of Alternative B (weighted point system) and Alternative C (lottery) are expected to be experienced only by potential fishery participants that either do or do not gain access depending on the outcome of the alternative selected. Alternative B (preferred) would rank applicants by their history of bottomfish fishing while Alternative C would implement a lottery system. Economic impacts on potential participants under these alternatives would be identical, with winners gaining access to the fishery (with an average annual gross revenue of approximately \$39,000) and losers remaining in their current position (no access to the fishery).

Both Alternative D (limited transferability) and Alternative E (full transferability) would be expected to have positive economic impacts on current participants as they would all provide a “windfall” profit for those who choose to sell their permits (which were originally obtained at minimal cost from NMFS). The potential value of this windfall (anticipated permit sales price) is difficult to determine as NWHI bottomfish permits have never been transferable. Again, economic impacts on potential participants under these alternatives would be identical, with winners gaining access to the fishery and losers remaining in their current position (no access to the fishery).

6.7 Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

Executive Orders 13178 (December 4, 2000) and 13196 (January 18, 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 around each 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 restrictions over fishing activities, including bottomfishing. The restrictions include spatial closures, caps on catch, and restrictions on eligibility to participate in the fishery. The Executive Order calls for the Secretary of Commerce to initiate the process to designate the NWHI Reserve as a National Marine Sanctuary. The public scoping associated with that process began in April, 2002.

As indicated throughout this document, the effects of this action will depend on the effects of the Reserve restrictions, which remain uncertain. However none of the alternatives considered here would increase overall participation beyond the FMP target level but would instead only allow changes in the identity of participants.

6.8 Executive Order 13089

Executive Order 13089 on Coral Reef Protection directs federal agencies to use their authority to protect coral reef ecosystems and, to the extent permitted by law, prohibits them from authorizing, funding or carrying out any action that will degrade coral reef ecosystems.

Risks of damage to coral reef habitat by bottomfishing gear are negligible because most of the bottomfish fishing in the NWHI occurs at depths greater than the portion of the photic zone where coral reefs and reef building organisms are normally found (0 - 100 m) (Section 3.1.1.1.4 and 3.1.2.1.4). There is a risk of bottomfish vessel groundings and pollutant spills from bottomfish vessels that could degrade coral reefs, but the risks are relatively small and the extent of any such degradation is likely to be relatively small. There is also a small risk of indirect adverse impacts via ecosystem links (e.g., through predator-prey relationships).

Although fishery impacts on coral reef habitat are negligible, it can be assumed that they occur in rough proportion to the amount of fishing effort. The proposed action will keep the number of total participants within those analyzed in Amendment 5 and this is not likely to adversely impact coral reef ecosystems, and is consistent with the objectives and recommendations of Executive Order 13089.

6.9 Traditional Indigenous Fishing Practices

The Magnuson-Stevens Act requires the Council to take into account traditional fishing practices in preparing any FMP or amendment. This regulatory adjustment is not expected to affect traditional indigenous fishing practices.

7. References

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