



**Alternatives to Amend the Hawaii Fishery Ecosystem Plan  
To improve MHI Bottomfish Regulatory Regime regarding:  
Federal Non-Commercial Bag Limit  
And  
Establishing a Market Grace Period for Sales after Fishery Closure**

**161<sup>th</sup> Council Meeting  
October 20-23, 2014  
Honolulu, Hawaii**

**1. Introduction and Background**

Two specific management actions relevant to the management of bottomfish management unit species in the Main Hawaiian Islands will be considered by the Council at its 161<sup>st</sup> meeting in Honolulu, October 20-23, 2014. The first action considers removing the non-commercial bag limit of five MHI Deep-7 species, in any combination, per person per day. The second action considers establishing a grace period for the sale of Deep-7 bottomfish by seafood processors, marketers and restaurants once the MHI Deep-7 bottomfish fishery is closed.

In 2007, the Council recommended, and NMFS implemented, a regulatory package for the management of the MHI Bottomfish fishery to address overfishing which was thought to be occurring in the fishery. New regulations created an annual quota-based management system that established the fishing year for the MHI Deep -7 bottomfish fishery starting on September 1 and ending on August 31 annually. Regulations also stipulated that non-commercial fishermen targeting and landing deep-7 bottomfish from vessels in federal waters operating in the MHI must obtain a federal permit and report their catch on a per-trip basis. In addition, non-commercial fishermen were limited to a total of 5 deep-7 bottomfish per person per day, in any combination, retained on a given trip. These provisions were included as a preventative measure to limit non-commercial deep-7 landings while the fleet-wide quota program for the commercial fishing sector was being implemented and refined.

During the first few years of the new management regime, the fishery reached its quota which triggered State and Federal agencies to close the fishery prior to the end of the fishing year. As the MHI bottomfish fishery is primarily a single day fishery, fishermen fished up until the end of the closure date and would then deliver their product to the market/auction. The regulations prohibit the possession of deep-7 bottomfish caught from the MHI once the fishery is closed. This created a problem for restaurants, markets and seafood processors who purchased deep-7 species just prior to the fishery closure and would still be processing or distributing those fish after the closure date. In response, some markets began limiting purchases of deep-7 bottomfish by up to one week prior to the closure. This created confusion within the bottomfish fishing and seafood marketing communities.

<b>Fishing Year</b>	<b>Fleet-wide Quota</b>	<b>Management Regime</b>	<b>Closure Date</b>	<b>Total Landings</b>	<b>Overage/ Underage</b>
2007-2008	178000	Total Allowable Catch	16-Apr-08	196147	18147
2008-2009	241000	Total Allowable Catch	6-Jul-09	259194	18194
2009-2010	254050	Total Allowable Catch	20-Apr-10	208412	45638
2010-2011	254050	Total Allowable Catch	12-Mar-11	268089	14039
2011-2012	325000/346000	Annual Catch Target (ACT) Annual Catch Limit (ACL)	No closure	228388	- 96612
2012-2013	325000/346000	Annual Catch Target (ACT) Annual Catch Limit (ACL)	No closure	237,434	-88509
2103-2014	346000/346000	Annual Catch Target (ACT) Annual Catch Limit (ACL)	No closure	308,865	-37135

Summary Table of Total Annual Quota, Quota Type, Closure Date, and Total Landings relative to Annual Quota.

Given the fishery monitoring and management of the MHI Deep-7 bottomfish fishery has transitioned to an ACL-based regime, the Council is now considering revisiting the purpose and function of the non-commercial bag limit management provision. The Council will also consider and discuss market impacts on the seafood processors, distributors, wholesalers, restaurants and retailers due to quota-based fishery closures.

## 2. **Purpose and Need**

### *Removal of non-commercial bag limit*

Transition from an open access fishery to a quota-based fishery with near real time monitoring through per trip reporting from the commercial and non-commercial sectors has been largely implemented. Monitoring and management of the MHI Deep-7 Bottomfish fishery has evolved since the introduction of the quota-based management regime in 2007. The current level of federal MHI Non-commercial Bottomfish Permit holders has been low since the implementation of the requirement in 2008. At its peak, the total number of registered non-commercial bottomfish permit holders was 80 in the first full year of implementation which ran from September 2008 through August 2009. Since then, annual issuance of permits has dropped to the current the level of 2 as of October 2014.

<b>Year</b>	<b>Number of Non-Commercial Bottomfish Permits</b>	<b>Number of Commercial Marine License Holders</b>	<b>Number of Dealers reporting Bottomfish Sales</b>
2002	N/A	384	-
2003	N/A	348	-
2004	N/A	358	-
2005	N/A	373	-
2006	N/A	332	-
2007/2008	N/A	351	285
2008/2009	80	476	360
2009/2010	59	459	345
2010/2011	22	471	349
2011/2012	18	479	358
2012/2013	10	458	357
2013/2014	3	456	347
2013/2014	2*	416	341

Summary Table of Total Number of Federal Non-Commercial Permits Issued per Year.

\*Permits issued by NMFS PIRO in 2014 as of October 13, 2014.

The average number of CML holders for the five year period prior to 2007 was 359. In 2007, the year following the implementation of the total allowable catch regime the CML licenses jumped to 476 holders, an increase of 125 new holders. The increase in CML holders is thought to result from the coordinated statewide engagement effort by the State, Council and NMFS with the bottomfish community on the new management regime and requirements.

Upon closer evaluation of the increase in the total number of CML holders, it appears several factors contributed to this change, including: 1) community engagement on new rule requirements; 2) implementation of the new non-commercial permit requirement; and 3) implementation of the new National Saltwater Angler Registry. Based on discussions and input from stake holders on this issue, new CML entries may have resulted in part from avoidance of the non-commercial bag limit of 5 fish per person per day and comparable overall permit costs. Concurrent with the implementation the new regime was NMFS implementing the National Saltwater Angler Registry requirement for non-commercial fishermen in 2010. In the first year, the Registry was free but subsequently cost fishermen \$15 per year to maintain. If a fisherman obtained a CML, he would be subject to neither the Federal non-commercial bottomfish permit limits nor the Saltwater Angler Registry fees. Therefore many fishermen elected to apply for and maintain a CML in lieu of the non-commercial permit.

Participation in the non-commercial federal bottomfishing permit has been low since inception and declining over the past eight years. The Council advisory bodies discussed this issue of low participation and considered removing the federal non-commercial permit requirement and modifying the bag limit. However, upon further evaluation and consideration, it was concluded that the removal of the permit requirement provision would likely result in the fishing

community reverting back to dropping their CMLs and fishing legally without any reporting requirement.

Utility of the non-commercial bag limit of five Deep -7 bottomfish per day per person was intended to be a precautionary management measure as the new quota based management regime was implemented. The fishery has effectively transitioned to the management regime that includes trip-based reporting and ACLs. For these reasons, the Council will now revisit the need for this measure. This action would provide potential relief to non-commercial fishermen from the bag limits restriction while not eliminating the data collection and fishery monitoring provisions now in place.

In general, the State coordinates management of MHI Deep-7 bottomfish through the establishment of rules consistent with the Federal regulations governing this fishery. An exception to this consistency is related to the non-commercial bag limit. Currently, the State's rule limits the landing of onaga and ehu to a total of 5 fish, in any combination, per person per day. The Federal rule is five fish of any Deep-7 combination per person per day. The State Division of Aquatic Resources will be holding scoping meetings to change the daily bag limit of bottomfish in the fall of 2014. Suggested changes to be vetted through the community will include increasing the bag limit to 10 fish per person per day. Given the need to promulgate consistent rules, final action by the Council at the 161<sup>st</sup> meeting may be premature.

#### *Market Grace period for sale of Deep-7 Bottomfish*

The regulations now prohibit possession of deep-7 bottomfish caught from the MHI creating a problem for businesses who buy and sell bottomfish after fishery has been closed. Once fishermen sell their catch (ex-vessel), seafood processors, wholesalers, retailers and restaurants must then process and sell that bottomfish before the fishery closes. Most of the deep-7 bottomfish have a useable shelf-life from 3-7 days after being landed. However, due to the fear of not being able to clear all bottomfish by the closure date (especially for fish caught at or near the closure of the fishery) and comply with the law, some markets have rejected purchasing deep-7 bottomfish by up to one week prior to the closure. The inconsistent application of markets randomly setting self imposed cutoff dates has created confusion in the fishing community which has led to representatives from the market and fishing industry sectors requesting a formal grace period be established in the regulation.

Providing markets the ability to sell Deep-7 bottomfish for up to a week after the closure of the fishery could help alleviate this problem. This action would provide fishermen the ability to fish up to any potential closure and sell their fish to market. This would provide markets the ability to legally process and sell that bottomfish after the closure date.

### **3. Proposed Action**

The Council proposes to remove the non-commercial bag limit for the MHI deep-7 bottomfish fishery and institute a market grace period of five (5) days for the sale of deep 7 bottomfish.

### **4. Management Objective**

The fishery management objective of this action is to improve the overall management regime of the MHI Deep-7 bottomfish fishery by removing the non-commercial bag limits for Deep-7

bottomfish species of five bottomfish per person per trip and by establishing a grace period of five days for the market sale of MHI Deep-7 bottomfish after a MHI fishery closure.

## 5. **Alternatives Considered**

### 5.1 ***MHI Bottomfish Fishery Non-commercial Bag Limit***

#### *Alternative 1a) No Action-Keep the bag limit at 5 of any Deep-7 species*

This alternative keeps the current bag limit at a total of five Deep-7 bottomfish, consisting of any deep-7 species, per person per trip/day.

The fishery will continue to operate under the coordinated State and Federal ACL regime and close, if needed, based on the existing near real time monitoring of commercial landings.

#### *Alternative 1b) Increase the bag limit to match the State of Hawaii proposed bag limit of 10*

This Alternative would increase the non-commercial bag limit from 5 to 10 Deep-7 bottomfish per person per trip/day.

#### *Alternative 1c) Remove the bag limit*

This Alternative proposes to remove the federal bag limit of 5 Deep-7 per day per person.

### 5.2 ***Market Grace Period***

#### *Alternative 2a) No Action*

Currently, there is no grace period for selling of Deep-7 bottomfish caught, legally prior to the fishery closure, after the closure date. Under this Alternative, there would continue to be no grace period and fishermen will continue experience problems with fish markets randomly accepting bottomfish prior to the closure to avoid being in violation of the procession prohibition once the fishery closes.

#### *Alternative 2b) Provide a market grace limit of 3 days*

This Alternative provides a grace period for selling fish caught prior to the closure for up to 3 days after the closure. Three days is the lower limit of how long bottomfish can be held fresh by a fish market and provides the fishermen the ability to fish right up to the closure of the fishery.

#### *Alternative 2c) Provide a market grace limit of 5 days*

This Alternative is similar to the previous option but provides a grace period of up to 5 days after the closure, which is near the upper limit of how long some of the deep-7 bottomfish can be held fresh by the market. The 5 day grace period allows for fish markets/sellers more flexibility in buying and selling deep-7 bottomfish.

## 6. **Proposed Action**

The Council may consider preliminary options to improve the MHI Bottomfish management regime with regard to non-commercial bag limits and market delays for the sale of bottomfish once the fishery is closed at the 160<sup>th</sup> Council Meeting and direct staff to prepare a regulatory based upon these options for analysis at its next meeting.

**Summary Table of Options**

<i>Issue</i>	<i>Option</i>
1) MHI BF NC Bag Limit	a) No Action
	c) Increase bag limits
	d) Remove bag limits
2) Market Grace Period	a) No Action
	b) Allow 3-day grace period
	c) Allow 5-day grace period

**7. Impacts of the Alternatives**

***Biological and Ecological Impacts***

***7.1.1 Impacts on Target Stocks***

*Alternative 1a) No Action-Keep the bag limit at 5 of any Deep-7 species*

This alternative keeps the current bag limit at a total of five Deep-7 bottomfish, consisting of any deep-7 species, per person per trip/day. The current limit was put in place due to the uncertainty in level of participation and harvest amount of the non-commercial bottomfish fishing sector at the time when the new quota based management regime was implemented. Since then, the low participation numbers in the Federal MHI non-commercial bottomfishing permit has resulted in low non-commercial harvest levels that have not provided sufficient data. The fishery will continue to operate under the coordinated State and Federal ACL regime and close, if needed, based on the existing near real time monitoring of commercial landings.

*Alternative 1b) Increase the bag limit to match the State of Hawaii proposed bag limit of 10*

This Alternative would increase the non-commercial bag limit from 5 to 10 Deep-7 bottomfish per person per trip/day potentially increasing the total number of Deep-7 bottomfish harvested in the fishery. Bottomfish caught by the non-commercial sector is not tracked and allocated toward the annual catch limit. As such, extensive harvest by this sector could potentially impact the overall status of the fishery. However, based on past low participation by this sector in the federal non-commercial bottomfish permit and reporting program and a doubling of the current bag limit to 10, it is highly unlikely that this action will have significant impact on the targeted stocks.

*Alternative 1c) Remove the bag limit*

This Alternative would completely remove the non-commercial bag limit of 5 Deep-7 bottomfish per person per trip/day potentially increasing the total number of Deep-7 bottomfish harvested in the fishery. Bottomfish caught by the non-commercial sector is not tracked and allocated toward the annual catch limit. As such, extensive harvest by this sector could potentially impact the overall status of the fishery. However, as with increasing the bag limit, removing of the bag limit will likely have no significant impact on the status of the stock.

*Alternative 2a) No Action*

This alternative will have a negligible positive impact on the targeted stock. Currently, there is no grace period for selling fish caught legally before the closure date after the closure date. If

anything, under this alternative less fish may be caught and sold as the fishery will effectively close earlier than officially scheduled as some markets self-impose early cutoff dates for purchasing.

*Alternative 2b) Provide a market grace limit of 3 days*

This alternative provides a short grace period for seafood dealers, market and restaurants to sell bottomfish for up to 3 days after the closure. As with Alternative 2a, this 3 day grace period will have a negligible impact on the targeted stock. Under this alternative, no additional fishing mortality will be allowed over the status quo. This is the lower limit of how long bottomfish can be held fresh by a fish market and provides the fishermen the ability to fish right up till the closure date and sell their catch.

*Alternative 2c) Provide a market grace limit of 5 days*

This Alternative is similar to Alternative 2b but provides a grace period of up to 5 days after the closure, which is the upper limit of how long some of the deep-7 bottomfish can be held fresh by the market. This Alternative provides no additional fishing mortality on the targeted stock as compared to the status quo. The 5 day grace period allows for fish markets/sellers more flexibility in buying and selling deep-7 bottomfish.

**7.1.2 Impacts on Non-target Stocks**

All alternatives considered here will have negligible relative impacts on non-targeted stocks as the measures considered here will not change operations in the MHI bottomfish fishery.

**7.1.3 Impacts on Protected Species**

All alternatives considered here will not change the relative impacts to protected species from the MHI bottomfish fishery. In the Proposed 2015 LOF, NMFS proposed to remove the Hawaiian monk seal from the list of species and/or stocks killed or injured in the MHI bottomfish fishery because no mortalities or injuries of monk seals from fishery interactions are attributed to the bottomfish fishery. Proposed 2015 List of Fisheries (79 FR 50589, August 25, 2014)

**7.1.4 Impacts on Biodiversity and Ecosystem Functions**

All alternatives considered here will have negligible impacts on biodiversity and ecosystem functions from the MHI bottomfish fishery

**7.1.5 Essential Fish Habitat**

All alternatives considered here will not impact essential fish habitat from the operations in MHI bottomfish fishery.

**7.2 Social and Economic Impacts**

*Alternative 1a) No Action-Keep the bag limit at 5 of any Deep-7 species*

All things equal, retaining the current bag limit for non-commercially caught Deep-7 species is not likely have any widespread social or economic impacts to Hawaii's fishery participants or

fishing community members. It would appear that many fishermen who would otherwise obtain the non-commercial bottomfishing permit or the National Saltwater Angler permit from the National Marine Fisheries Service have instead elected to obtain a Hawaii Commercial Marine License. The reasons for this are obvious: cost of this license is quite reasonable (\$50), it is currently only \$16 more than the Federal bottomfishing permit, and having it allows the holder to sell excess catch, perhaps to partially offset the costs of the fishing trip. Because of this option, the Council has heard relatively few complaints from fishermen regarding any effects from the current bag limit.

However, this must be weighed against potential impending changes to State management of a portion of the fishery. If the State decides to increase or eliminate its current bag limit and the Council takes no corresponding action, there is great potential for disruption to the fishery in general and confusion and anger among fishermen and enforcement officers. It is also likely that fishermen will simply say that their catch came from within State waters. While this may not have immediate negative impacts to participants and communities, the loss of spatial catch and effort information across the species' range may have unintended future consequences.

*Alternative 1b) Increase the bag limit to match any State of Hawaii bag limit increase*

Council action to ensure that Federal and State rules are complementary would reduce or eliminate the potential for disruption to the fishery in general and confusion and anger among fishermen and enforcement officers. In addition, while there are few Federal non-commercial bottomfish permit holders at this time, allowing them, and future permit holders, the opportunity to retain more bottomfish would result in more local fish available in the community. The Deep-7 species have great cultural significance across Hawaii's ethnic groups, due in part to the red color of many of these fish, which is seen as bringing good luck. Thus, these species are highly prized at local celebrations, such as holidays, weddings, birthdays, and graduations and whole fish command impressive prices (\$80-\$100 for a 3-4 pound specimen) at some markets in the State.

*Alternative 1c) Remove the bag limit*

Impacts to fishing participants and fishing communities from removing the bag limit completely would largely mirror those of increasing the bag limit.

*Alternative 2a) No Action*

Maintaining the current prohibition on the retention of Deep-7 bottomfish after the fishery is closed is already negatively impacting the fishery's participants and members of Hawaii's fishing communities. Because restaurants and markets are unwilling to risk the potential fines associated with possessing these species post-closure, they have elected to make individual, uncoordinated decisions about when to stop purchasing fishing from fishermen or wholesalers. This situation is very disadvantageous to those who deal commercially in Deep-7 bottomfish because it severely affects their ability realize maximum profit from the entire fishing season. This is made more important by the fact that bottomfish caught late in the fishing season tend to command higher prices than those caught earlier in the season. The current situation has

probably even resulted in lost revenues, which would occur when a commercial fisherman made an assumption that he would be able to sell his late season catch, but, failing to find a willing buyer, was forced to give them away.

There are also non-economic social effects to Hawaii's fishing communities from not having Deep-7 market grace period. First, any wastage of fish resulting from the current regulations would be culturally unacceptable because of both the highly prized nature of these fish and the important role fish generally play in island communities. While such wastage probably doesn't happen often, since absent a willing buyer, the fish will simply be given away or consumed at home, one can see situations where wastage may occur. Second, the regulation is likely limiting the amount of these fish to local consumers because, as explained previously, many fish markets and dealers are making (overly) cautious decisions about when to make their last purchases of Deep-7 species for the season. Finally, fishing, whether for fulltime, part-time, or expense purposes, is an activity that competes with other economic and social obligations. Fishermen can only make a rational choice to fish commercially instead of attending to important social commitments when they are assured that they will be able to see the fish they catch during these trips.

#### *Alternative 2b) Provide a market grace limit of 3 days*

Providing for a market grace period for caught Deep-7 species would allow for more economic stability in the fishery for fishermen and dealers, restaurants, and markets, which would no longer have to worry about being fined for possessing legally caught fish several days after the closure. A grace period also has the potential to provide fishermen with more information on which to base choices about fishing versus other economic or social pursuits.

#### *Alternative 2c) Provide a market grace limit of 5 days*

Impacts to fishing participants and fishing communities from providing for a market grace period of 5 days would mirror those of providing for a market grace period of 3 days. However, this alternative will provide additional economic benefits to sell/buy fish closer to the fishery closure date and allow two additional days to clear products.

#### **7.2.1 Impacts on Public Health and Safety at Sea**

All Alternatives considered here will not impact public health and safety at sea.

#### **7.3 Impacts on Administration and Enforcement**

##### *Non-commercial Federal bag limit*

Maintaining or changing the non-commercial Deep-7 daily bag limit will not impact the level of surveillance required to enforce this management measure. Enforcement agents must now inspect individual vessels on the water or at dock side to determine if the daily catch limit of five Deep -7 bottomfish is in compliance. Whereas, removal of the Deep-7 bag limit for non-commercial bottomfish, will reduce the enforcement burden required to monitor individual vessels daily harvest of Deep-7 species.

Administratively, changes to the federal bag limit would need to be coordinated with the Hawaii Division of Aquatic Resources as state rules would need to be changed concurrently to ensure consistency between state and federal regulations. Inconsistent daily catch limit regulations would create additional monitoring confusion and enforcement burdens.

The State of Hawaii will be considering changes to its bag limits for non-commercial bottomfish fishing. Options currently include increasing the limit to 10 fish per person per day, which would double the current Federal limit, creating a possible enforcement problem as well as incongruent fishing regulations.

#### *Market Grace Period*

Providing market grace period for the sale of MHI caught bottomfish after the closure of the fishery may create additional burden on the enforcement of the fishery closure. Prohibiting possession of bottomfish once the fishery has closed is clean and enforceable as prohibition on possession is applied to fishing vessels at sea, at dockside and in the markets. This change would require enforcement personnel to determine if the bottomfish was caught legally prior to the closure are in legal “possession” during the grace period as it is being processed and sold. Although this would not increase the burden of monitoring, it would increase the difficulty of determining when the individual fish was caught.