

**50 CFR Part 660****RIN 0648-AJ02****[Docket No. 961121322-6322-01; I.D. 110696B]****Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fishery; Mau Zone Moratorium**

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

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

**SUMMARY:** NMFS proposes that no new permits be issued for 2 years to vessel owners for harvesting bottomfish in the Mau Zone of the Northwestern Hawaiian Islands (NWHI) so that effort in the fishery will be stabilized while the Western Pacific Fishery Management Council (Council) develops a limited access program for the area. A moratorium on new permits would stabilize effort in the fishery while the Council develops a management system for the Mau Zone that may permanently limit access to the fishery.

**DATES:** Comments on the proposed rule will be accepted through January 10, 1997.

**ADDRESSES:** Send comments to Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the Environmental Assessment can be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, NMFS, (808) 973-2985; Svein Fougner, NMFS, (310) 980-4034; or Kitty Simonds, Council, (808) 522-8220.

**SUPPLEMENTARY INFORMATION:** The Council's Bottomfish Plan Team, Advisory Panel, and Advisory Review Board held a meeting on November 16-17, 1995, and, following a review of the NWHI bottomfish fishery, recommended that the Council place a 1-year moratorium on issuing new Mau Zone permits so that a limited entry program could be developed. The NWHI bottomfish fishery is divided into a Ho'omalulu Zone, which is presently managed by a limited entry program, and a Mau Zone, which is an open access fishery. A Federal permit is required for both areas.

The Council's Scientific and Statistical Committee met December 4-5, 1995, and asked for further biological and economic analysis of the NWHI

fishery, which was provided by the NMFS Southwest Fisheries Science Center, Honolulu Laboratory, in April 1996 (Administrative Report H-96-07). The analysis shows that the average fishing vessel recoups operating costs, but does not recoup total costs. Average economic conditions for the fishery are poor. The number of vessels with permits in the Mau Zone exceeds the estimated economic optimum, even when the analysis assumes the potential maximum effort only for the active vessels. This report may be obtained from the Administrator, Southwest Region, NMFS (see **ADDRESSES**).

New estimates put the maximum sustainable yield (MSY) at 455,000 lb (206,385 kg) for the Ho'omalulu Zone and 131,000 lb (59,421 kg) for the Mau Zone. In 1994 and 1995, landings from the Mau Zone were 158,200 lb (71,758 kg) and 210,000 lb (95,254 kg), respectively, exceeding the MSY. Although landings from the Ho'omalulu Zone have not exceeded the MSY, a combination of two zones, if adopted by some future action, could lead to an additional increase in fishing effort in the Mau Zone, because the vessels that fish farther up the Hawaiian chain have, on average, greater fishing power than vessels now fishing in the Mau Zone.

At its 89th meeting, held April 24-26, 1996, the Council voted to recommend a 1-year moratorium on issuing new permits for the Mau Zone. At its 90th meeting, August 7-9, 1996, the Council recommended that the moratorium be extended to 2 years, because 1 year may not allow sufficient time to complete the development of and implement an access limitation system for the Mau Zone fishery.

The Council took action on the recommended moratorium in accordance with the framework procedures of 50 CFR 660.67(d), which specifically addresses the access limitation process. During the proposed moratorium, the Council would develop an approach that aims to reduce the potential increase in fishing pressure in the Mau Zone and increase the economic efficiency of the fishery.

Discussions among the members of the Council's Bottomfish Plan Team, Task Force, Advisory Panel, and Review Board have pointed out the necessity of three elements in any limited access plan: Simplicity, equity, and the importance of restricting the number of potential participants. Approximately 80 vessels have had permits for the Mau Zone at some time in the past; however, some owners of vessels have died, and some vessels have permanently left the fishery, leaving a core of perhaps 30 vessels, whose owners could renew

their permits and participate in the fishery. Any plan that the Council adopts is likely to contain some kind of qualifying criteria. A permit obtained by a former permittee during the proposed moratorium would not likely, in itself, guarantee a permit under the permanent limited access system. Historical landings data and current landings data, coupled with non-transferable permits, has been one approach considered for reducing the number of bottomfish vessels in the fishery and maintaining an active fleet at an optimal level.

Following the effective date of the final rule implementing the moratorium, only those vessel owners who have held Mau Zone permits would be eligible to renew or obtain permits for the length of the moratorium.

**Classification**

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

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

The proposed rule would establish a moratorium for 2 years on issuing new permits to harvest bottomfish in the Mau Zone of the Northwestern Hawaiian Islands (NWHI). During the moratorium, a limited entry program would be developed for the area by the Council, which would be implemented by regulatory amendment to the plan using the framework procedures at 50 CFR 660.67(d).

The NWHI bottomfish fishery is divided into two zones, the Ho'omalulu Zone and the Mau Zone. The Ho'omalulu Zone, the zone northwest of the Mau Zone, is currently managed by limited access, while the Mau Zone is managed by open access. A Federal permit is required to fish in either area. The Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries (FMP) contains an administrative framework that anticipated the possibility of implementing limited access programs. The framework process requires that specific factors, such as participation in the fishery, economics of the fishery, and the capability of fishing vessels to engage in other fisheries, be reviewed before any action is taken. This process was followed and opportunity was provided for public comment. No individuals with fishing vessels presently participating in the fishery would be denied a permit; however, no permits would be issued to new participants for 2 years following the effective date of the final rule. Catch, effort, revenue, or employment in the fishery during the term of the moratorium would not be expected to change as a result of the moratorium. As a result, an initial regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 21, 1996.

Gary C. Matlock,

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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

**PART 660—FISHERIES OFF WEST  
COAST AND WESTERN PACIFIC  
STATES**

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

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

2. In § 660.61, paragraph (a) is revised to read as follows:

**§ 660.61 Permits.**

(a) The owner of any vessel used to fish for bottomfish in the Mau Zone must have a permit issued under this section for that vessel. Applications from persons not previously permitted to fish in the Mau Zone will not be approved for a 2-year period beginning [the effective date of the final rule].

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