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FINDING OF NO SIGNIFICANT IMPACT

Annual Catch Limits and Accountability Measures for the Main Hawaiian Islands Deep 7 Bottomfish Fishery for Fishing Years 2021–22 through 2023–24 (RIN 0648-BK72)

December 21, 2021

The National Marine Fisheries Service (NMFS) will implement an annual catch limit (ACL) of 492,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for each of the fishing years 2021–22, 2022–23, and 2023–24. As an in-season accountability measure (AM), if NMFS projects that the fishery will reach the ACL in any given fishing year, we would close the fishery in Federal waters for the remainder of the fishing year. As a post-season AM, if NMFS determines that the catch exceeded the ACL in a fishing year, we would reduce the ACL for the following fishing year by the amount of the overage. The proposed rule supports the long-term sustainability of MHI Deep 7 bottomfish.

Purpose of Finding of No Significant Impact (FONSI):

The National Environmental Policy Act (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for any proposal for a major federal action significantly affecting the quality of the human environment (42 U.S.C. § 4332(C)). The Council on Environmental Quality (CEQ) Regulations direct agencies to prepare a Finding of No Significant Impact (FONSI) when an action not otherwise excluded will not have a significant impact on the human environment (40 CFR 1500.4(b) & 1500.5(b)). To evaluate whether a significant impact on the human environment is likely, the CEQ regulations direct agencies to analyze the potentially affected environment and the degree of the effects of the proposed action (40 CFR 1501.3(b)). In doing so, agencies should consider the geographic extent of the affected area (i.e., national, regional or local), the resources located in the affected area (40 CFR 1501.3(b)(1)), and whether the project is considered minor or small-scale (NAO 216-6A CM, Appendix A-2). In considering the degree of effect on these resources, agencies should examine both short- and long-term effects (40 CFR 1501.3(b)(2)(i); NAO 216-6A CM Appendix A-2 - A-3), and the magnitude of the effect (e.g., negligible, minor, moderate, major). CEQ identifies specific criteria for consideration (40 CFR 1501.3(b)(ii)-(iv)). Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

In preparing the FONSI, we consider the following NEPA documents which evaluate the affected area, the scale and geographic extent of the proposed action, and the degree of effects on those resources (including the duration of impact, and whether the impacts were adverse and/or beneficial and their magnitude).



- NMFS and WPFMC. 2019. Final Environmental Assessment, Annual Catch Limits and Accountability Measures for Main Hawaiian Islands Deep 7 Bottomfish Fisheries (RIN 0648-BI54). May 22, 2019. FONSI, May 22, 2019. The 2019 EA analyzes the potential impacts on the human environment of a range of alternatives. NMFS selected Alternative 3 and implemented a catch limit of 492,000 lb of Deep 7 bottomfish each year for fishing years 2018–19 through 2020–21, with in-season and post-season AMs. (84 FR 29394; June 24, 2021).
- NMFS and WPFMC. 2021. Final Supplemental Environmental Assessment, Annual Catch Limits and Accountability Measures for the Main Hawaiian Island Deep 7 Bottomfish Fishery for Fishing Years 2021–22 through 2023–24, Including a Regulatory Impact Review (RIN 0648-BK72). December 21, 2021. The SEA supplements the 2019 EA and, therefore analyzes the potential impacts on the human environment of a range of alternatives including the selected alternative, Alternative 3, which is to implement a catch limit of 492,000 lb of Deep 7 bottomfish each year for fishing years 2021–22 through 2023–24, with in-season and post-season AMs.

The 2019 Environmental Assessment or EA (NMFS and WPFMC 2019) and 2021 Supplemental EA or SEA (NMFS and WPFMC 2021) are hereby incorporated by reference per 40 CFR 1501.6(b).

On November 1, 2021, NMFS published a proposed rule to implement the ACL and AMs for the fishery, including a draft SEA, regulatory impact review, and request for public comments (86 FR 60194). The comment period ended November 16, 2021. NMFS received 26 submissions, primarily from university students from a policy class, and the remaining submissions were from other interested members of the public. NMFS did not receive any comments from fishery participants, fishery management agencies, or non-governmental organizations. Most of the comments generally supported the action, including that the ACL and AMs would achieve the purpose and need of preventing overfishing and managing the fishery sustainably while maintaining opportunities for participation. Other comments dealt with social, economic or cultural considerations; concerns about underreporting of catch; equity and catch allocation among participants; that the fish population is decreasing as evidenced by decreasing catch, and the proportion of income participants earn from bottomfish fishing. NMFS considered public comments in finalizing the SEA, in making its decision on the selected management action, and prior to finalizing this FONSI. The comments we received did not change the alternatives considered, the expected fishery outcomes, or the analysis of environmental or fishery effects in the draft SEA. We respond to the comments in detail in the final rule.

The SEA supplements a 2019 EA that was prepared using the 1978 CEQ NEPA Regulations because the EA was completed before the publication of the 2020 CEQ regulations. The SEA was prepared using the 2020 CEQ NEPA Regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020, and reviews begun after this date are required to apply the 2020 NEPA Regulations unless there is a clear and fundamental conflict with an applicable statute (85 Federal Register (FR) 43372) (40 Code of Federal Regulations (CFR) §§ 1506.13, 1507.3(a)). The NEPA review for the SEA, which covers the proposed action, began on July 17, 2021, and accordingly proceeds under the 2020 regulations.

The proposed action and its purpose and need are the same as was considered in the EA. (EA, section 1.3; SEA, section 1.6). The ACL and AMs are part of the same ongoing management activity. In the EA and SEA, the Council and NMFS considered the environmental effects of five management alternatives:

- Alternative 1. No action. Do not implement an ACL or AMs.
- Alternative 2: Implement an ACL of 306,000 lb. (2019 EA Status quo/NEPA baseline)
- Alternative 3. Implement an ACL of 492,000 lb.
- Alternative 4. Implement an ACL of 420,000 lb.
- Alternative 5. Implement an ACL of 336,000 lb.

Alternatives 2 through 5 include an in-season AM which provides that NMFS will close the fishery in Federal waters if we project that catch from State and Federal waters will reach the ACL, and a post-season AM which provides that if the fishery were to exceed an ACL in a given year, NMFS would apply an overage adjustment to the ACL in the following year. We note that, regardless of which action alternative is selected, the State of Hawaii has the authority to implement a complementary closure of State waters once NMFS implements a prohibition on harvesting and selling MHI Deep 7 bottomfish caught in Federal waters. Although not part of the proposed Federal action, the State has implemented such a measure the four times NMFS closed the fishery in Federal waters.

Alternative 3 is the preferred alternative. Our analysis in the EA and SEA indicates that this alternative would not change fishing compared with the baseline or when considered in relation to recent fishing (see SEA, section 3). We expect bottomfish fishing in Hawaii to continue at recent levels with no large fishery expansion because the fishery has not been constrained by ACLs. The fishery has not attained the ACL in recent years, and catches and participation did not increase when catch limits increased (see description of recent fishing, SEA, section 3.2.1.2). NMFS and the Council will continue to regulate and monitor the fishery to ensure sustainability.

Approach to Analysis

We evaluate the potential environmental and fishery effects of implementing a 492,000 lb ACL and the associated in-season and post-season AMs and alternatives compared with the effects of the no-management action baseline (Alt. 1). Although the 2019 EA included a no-management change baseline (Alt. 2), in the SEA, we compare effects of the proposed action to the no-action baseline (Alt. 1) since the fishery does not currently have an ACL. We evaluated the effects of these measures in fishing years 2018–19, 2019–20, and 2020–21 in the EA, and evaluate the effects of the same management measures in fishing years 2021–22, 2022–23, and 2023–24 in the SEA. We consider effects of the proposed ACLs and AMs on Deep 7 bottomfish in the MHI, other marine resources affected by the fishery, and fishery participants and affected fishing communities.

The analysis in the EA and SEA considered the geographic setting and scope of the proposed action and its effects, and considered the degree to which specific resources might be affected in relation to the baseline. We considered short-term, long-term effects, beneficial and adverse effects, and considered the potential for additive or synergistic effects.

The proposed action is not considered to meaningfully contribute to a significant impact based on the scale of impact, as NMFS does not expect the conduct of the fishery under the proposed action to change substantially from operations under the no-action baseline (EA, section 2.2; SEA, section 2). The fishery is not constrained by the ACLs, and the AMs have not changed the conduct of the fishery in the past. The fishery is not approaching the ACLs and the MHI bottomfish stock is healthy. Fishing would continue to be sustainable under the selected alternative. We note that our “degree of effects” analysis is based on the projection that fishing would not change under the proposed action, but could potentially expand as it could under the no-action. If the fishery were to expand, we generally find that having an ACL and AMs would promote conservation of target stocks compared to the no-action alternative.

The proposed action will not meaningfully contribute to significant impacts to specific resources and would not result in significant adverse effects on the long-term sustainability of Deep 7 bottomfish, non-target species, bycatch species, protected species, or on marine habitats. (See summary below).

The proposed action is not connected to other actions that have caused, are causing or could cause large and adverse effects to the resources in the affected area, and there is therefore no potential for the effects of the proposed action to add to the effects of other projects, such that the effects taken together could be significant and adverse (EA, section 4.6; SEA, sections 1.9 and 3.7).

Geographic Extent and Scale of the Proposed Action

The EA describes the management area where the subject fishery is authorized, and shows that the environmental effects analyzed in the EA are fairly localized. Specifically, the EA describes that the action area is waters where fishing for Deep 7 bottomfish occurs in State and Federal waters of the MHI (i.e., from the Island of Hawaii in the southeast to Niihau Island in the northwest). Waters around islands northwest of Niihau are not part of the action area because bottomfish fishing is prohibited in Papahānaumokuākea Marine National Monument (EA, section 1.4). Bottomfish fishing occurs primarily in waters from 80 to 400 m deep in locations that are well known to fishery managers and fishermen. Thus, the extent and scale of the proposed action is local to the MHI.

The specification of ACLs and AMs is required under MSA National Standard 1, which applies to U.S. territories in the Pacific Islands as well as Hawaii, so a specification in Hawaii would not automatically lead to a new or modified management action in other locations. (EA, sections 1.9 (Scope) and 3.7 (Other considerations)).

There are a number of other factors that limit the scope of the effects of the proposed action. The EA and SEA describe that the proposed management action would not change the conduct of the fishery (EA, section 2.2; SEA, section 3.2.1.3). The management action is the same ACLs and AMs as were specified for the previous three years. Management of the fishery under an ACL and AMs including the in-season management measure has been in place since 2011. Finally, the management measure is intended to promote continued long term sustainability of bottomfish harvests.

In summary, the proposed action would be local and fishery effects are expected to be small scale because the proposed management measure is a continuation of years-long management scheme that has promoted continued sustainability of the MHI Deep 7 bottomfish resource, and because the fishery would not change under the proposed action.

Degree of effect

A. The potential for the proposed action to threaten a violation of Federal, state, or local law, or requirements imposed for environmental protection

The proposed action will not threaten a violation of any Federal, State, or local law, or requirement imposed for the protection of the environment. The proposed action is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements under National Standard 1, which requires NMFS to specify ACLs and AMs for most MUS in an FEP.

The proposed action will be consistent with other applicable laws (EA, sections 1.1 and 5). Council deliberations took place in public forums with opportunities for public comments during development of its recommendations. NMFS and Council staff developed the EA and SEA and coordinated the proposed action and environmental documents with several State agencies, including the DLNR and the Coastal Zone Management Office, with other offices responsible for reviewing action effects, and the public. NMFS provided opportunities for the public to review and comment on the EA and SEA and on the proposed rule and did not receive any comments indicating that the proposed action has the potential to violate a Federal, State, or local law imposed for environmental protection (Public review: EA, section 1.7; SEA, section 1.10. Compliance with other laws: EA, section 5).

B. The degree to which the proposed action is expected to significantly affect public health or safety

The proposed action will not have a significant impact on public health or safety. The MHI Deep 7 bottomfish fishery is not known to experience or cause public health or safety-at-sea issues. The proposed rule would not change the fishery in any manner and would not cause a race to fish. Therefore, there is no potential for a significant adverse effect to public health or safety (EA, section 4.3).

C. The degree to which the proposed action is expected to affect a sensitive biological resource

1. The degree to which the proposed action is expected to affect a sensitive biological resource including Federal threatened or endangered species and critical habitat

The proposed action would not affect endangered or threatened species and critical habitat relative to the NEPA baseline. The fishery is known to have a very limited effect on ESA-listed species and is not adversely modifying critical habitat and the fishery would not change with respect to ESA-listed species or critical habitat under the proposed action. Section 3.2.2 of the EA describes the endangered and threatened species potentially affected by the proposed action or the bottomfish fisheries in the MHI (i.e., fisheries targeting Deep 7 bottomfish and uku). The EA describes previous Biological Opinions under which the fisheries operated at the time the EA was prepared. Section 3.2.2 of the EA describes reinitiation of Endangered Species Act (ESA) consultation under section 7 of the ESA for the Hawaii bottomfish fisheries for recent listings.

The information in the 2019 EA indicated that the fisheries are not having a significant effect on the overall population size of any protected species, are not likely to reduce appreciably the likelihood of both survival and recovery of any species in the wild, and are not causing an adverse modification of critical habitat. Under the proposed action, NMFS does not anticipate a change in gear types used, areas fished, level of interaction with ESA-listed species or critical habitat, as compared to baseline conditions. Therefore, the action would not have effects on endangered or threatened species, seabirds, or critical habitat that have not been previously considered or authorized in ESA consultations or MMPA determinations (EA, sections 3.2.2, 4.2.2, 5.3).

The SEA incorporates by reference the information and analysis regarding effects on ESA-listed species from the 2019 EA, and supplemented the analysis by considering new information (SEA section 3.2.3). In 2008 NMFS completed a biological opinion (BiOp), modified in 2013; which analyzed the effects of the MHI bottomfish fisheries on ESA-listed species and critical habitat. NMFS determined that the bottomfish fisheries were likely to adversely affect, but not jeopardize, green sea turtles due to a small number of collisions with fishing vessels. NMFS also determined that the MHI bottomfish fisheries were not likely to adversely affect other ESA-listed species or adversely modify critical habitat. On February 1, 2019, NMFS PIRO Sustainable Fisheries Division (SFD) requested reinitiation of formal consultation under section 7(a)(2) of the ESA for the MHI bottomfish fishery in response to the listing of the oceanic whitetip shark and giant manta ray as threatened, and the designation of critical habitat for the MHI distinct population segment of the insular false killer whale, and on June 5, 2019, NMFS PIRO Protected Resources Division (PRD) reinitiated consultation. On February 1, 2019, and on July 7, 2021, NMFS also determined that during the period of consultation and before the issuance of a new biological opinion, the continued operation of the MHI bottomfish fisheries are not likely to jeopardize these species or adversely modify critical habitat and would not violate ESA section 7(a)(2), or result in an irreversible or irretrievable commitment of resources precluding implementation of any reasonable and prudent alternatives and would not violate ESA section 7(d) (EA, sections 3.2.2, 4.2.2, 5.3; SEA section 3.2.3). The SEA updates the ESA-consultation process that was in place as reported in the 2019 EA, but it does not change the findings reported in the 2019 EA regarding effects of the alternatives, including the proposed action, on ESA-listed species and critical habitat.

On April 15, 2021 NMFS announced a 90-day finding on a petition to list the shortfin mako shark (*Isurus oxyrinchus*) as threatened or endangered under the ESA and to designate critical habitat concurrent with the listing, so NMFS is initiating a status review of the species to determine whether listing under the ESA is warranted (86 FR 19863). If the shortfin mako shark is proposed for listing, PIRO SFD may request conference under the ESA with PIRO PRD. If the shortfin mako shark is listed, NMFS would consult as required under section 7 of the ESA to determine the effects of the fishery on this species.

In summary, based on the analysis in the EA as supplemented by the SEA, NMFS found that the MHI Deep 7 bottomfish fishery adverse effects on ESA-listed species are primarily related to the potential for vessel collisions with sea turtles. As shown in previous reviews, such collisions are likely to be rare and interactions do not have the potential for major adverse effects on threatened green turtles. The proposed action is not expected to change the fishery in a way that would

result in new or additional effects to listed species compared with effects under the no-action alternative and the recent specifications baseline.

2. *The degree to which the proposed action is expected to affect a sensitive biological resource including stocks of marine mammals as defined by the Marine Mammal Protection Act*

The proposed action would have a negligible effect on stocks of marine mammals as the term “negligible effect” is defined in the Marine Mammal Protection Act. Sections 3.2.2.2 and 4.2.2 in the EA and section 1.9 in the SEA describe the potential for the fishery to affect marine mammals. As part of the Hawaii bottomfish handline fishery, the MHI Deep 7 bottomfish fishery was confirmed to be classified as a Category III fishery under the 2021 List of Fisheries (86 FR 3028, January 14, 2021); which is the same classification the fishery had in 2019 (84 FR 22051, May 16, 2019). A Category III fishery is one with a remote likelihood or no known incidental mortality or serious injury of marine mammals. Under the proposed action, fishery operations are not expected to differ substantially from the baseline. Because the proposed action would not modify vessel operations or other aspects of the fishery, NMFS does not expect the fishery to affect marine mammals in any manner not previously considered under the List of Fisheries classification or authorized under the commercial fishing take exemption of section 118 of the Marine Mammal Protection Act. Because the MHI Deep 7 bottomfish fishery is not having a large and adverse effect on marine mammals and because the proposed action would not change fishing or its ongoing low effects on marine mammals, the proposed action would have no effect on marine mammals or marine stocks around the MHI compared to the baseline (EA, sections 3.2.2.2, 4.2.2, and 5.4; SEA section 1.9).

3. *The degree to which the proposed action is expected to affect a sensitive biological resource including essential fish habitat identified under the Magnuson-Stevens Act*

This proposed action would not affect essential fish habitat (EFH) or Habitat Areas of Particular Concern (HAPC) identified under the Magnuson-Stevens Act. Sections 3.2.3 of the EA and section 3.2.4 of the SEA describe that the fishery is not known to be adversely affecting EFH or HAPC. Bottomfish fishing methods are not known to cause substantial damage to the ocean, coastal habitats, corals, or marine habitats, including designated EFH and HAPC for any management unit species. Research to date indicates that bottomfish fishing, including gear deployment and a low level of anchor loss, does not have adverse impacts to habitats. Section 4.2.3 of the EA and section 3.2.4 of the SEA describe the potential effects of the alternatives on EFH and HAPC. The analysis explains that the proposed action would not change the fishery in any way that would lead to substantial physical, chemical or biological alterations to marine habitats. Under the proposed action, the fishery would operate at the same average level as the baseline alternative. NMFS does not expect the proposed action to change the gear types used, areas fished, or fishing methods as compared to baseline conditions. For these reasons, the proposed action is expected have no effect on areas designated as EFH or HAPC (EA, sections 3.2.3, 4.2.3; SEA, section 3.2.4).

4. *The degree to which the proposed action is expected to affect a sensitive biological resource including bird species protected under the Migratory Bird Treaty Act*

The proposed action would not affect migratory birds. The EA found that direct impacts on birds, notably seabirds, are minimal to non-existent in the fishery (EA, section 3.2.2.3).

Bottomfish fishing gear is not known to attract or hook birds. Seabirds are unlikely to interact with the bottomfish fishery because of the methods used to deploy and retrieve fishing tackle. The EA and SEA describe that there have been no reports of interactions between the Hawaii bottomfish fishery and seabirds (EA, section 3.2.2.3; SEA, section 3.2.3). NMFS does not expect the proposed action to change the gear types used, areas fished, or fishing methods as compared to baseline conditions. For these reasons, the fishery conducted under the proposed alternative would have no effect on seabirds (EA, sections 3.2.2.3, 4.2.2).

5. *The degree to which the proposed action is expected to affect a sensitive biological resource including national marine sanctuaries or monuments*

The proposed action will not adversely affect marine sanctuaries or monuments. National Marine Sanctuaries and Monuments have regulations governing activities within their boundaries. The proposed action does not supersede those regulations. The Hawaiian Islands Humpback Whale National Marine Sanctuary is the only sanctuary in the action area, and bottomfish fishing does occur in this sanctuary. Although humpback whales are found within the action area and potentially could interact with the bottomfish fishery, no reported or observed entanglements of humpback whales by bottomfish fishing gear have occurred in the history of the fishery (EA, sections 4.2.3). None of the proposed alternatives would change the way bottomfish fishing is conducted with respect to this sanctuary, so the proposed action would not affect the sanctuary or sanctuary resources (EA, sections 4.2.3, 4.5.1).

6. *The degree to which the proposed action is expected to affect a sensitive biological resource including vulnerable marine or coastal ecosystems, including, but not limited to, shallow or deep coral ecosystems*

The proposed action is expected have no effect on vulnerable marine or coastal ecosystems, including, but not limited to, shallow or deep coral ecosystems. As described in the EA (section 3.2.3) and the SEA (section 3.2.4); the fishery is not currently adversely affecting vulnerable ecosystems. The proposed action is not expected to change the way this fishery is conducted, and it would not change regulations that are in place to prevent and minimize adverse effects from bottomfish fishing on fish habitat. For example, prohibitions on destructive fishing practices such as explosives and bottom trawls would remain in place. Because the proposed action would not change the fishery in any way that would lead to adverse effects on sensitive ocean, coral or coastal habitats; or unique areas such as marine protected areas, marine sanctuaries or marine monuments, we conclude the proposed action would have no effect on such resources. (EA, section 4.2.3; SEA, section 3.2.4).

7. *The degree to which the proposed action is expected to affect a sensitive biological resource including biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)*

The proposed action is not expected to have more than limited effects on biodiversity or ecosystem functioning. There have been no identified impacts to marine biodiversity and/or ecosystem function from the MHI Deep 7 bottomfish fishery as bottomfish stocks are managed for optimal yield (EA, section 4.5.2; SEA section 3.5). The fishery would continue to be monitored and managed to ensure continued sustainable productivity of MHI Deep 7 bottomfish stock. Because the proposed action would not substantially modify vessel operations or other aspects of the fishery in the MHI, NMFS does not anticipate the proposed action would result in

changes in gear types used, areas fished, or fishing methods, as compared to baseline conditions. If the fishery should expand, as it could under the no-action alternative, the proposed action would provide limits to harvests of MHI Deep 7 bottomfish that would help ensure long-term productivity of the stock and this would contribute to minor positive impacts on maintaining biodiversity and ecosystem functioning compared to the no-action alternative. (EA, section 4.5.2).

D. The degree to which the proposed action is reasonably expected to affect a cultural resource: properties listed or eligible for listing on the National Register of Historic Places; archeological resources (including underwater resources); and resources important to traditional cultural and religious tribal practice

The proposed action would have no effect on cultural or archeological resources or resources important to traditional cultural and religious tribal practice. NMFS is not aware of any districts, sites, structures, or objects listed in or eligible for listing in the National Register of Historic Places within areas fished by the MHI Deep 7 bottomfish fishery, and bottomfish fishing in the MHI is not known to result in adverse impacts to scientific, historic, archeological or cultural sites (EA, section 3.5; SEA, section 3.5). The proposed rule would not change the fishery in any manner that would result in effects to such sites; therefore, there is no potential for the proposed ACL or AM to result in loss or destruction of significant scientific, cultural, or historical resources in the marine environment (EA, sections 4.2.3, 4.5.1; SEA, section 3.5).

E. The degree to which the proposed action has the potential to have a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898)

The proposed action would not have disproportionately high and adverse effects on the health or the environment of minority or low-income communities, compared to the impacts on other communities and the proposed action would not have the potential to affect stocks of fish that are caught by subsistence fishermen. The MHI Deep 7 bottomfish fishery is not known to be adversely affecting stocks of fish that are caught by subsistence fisherman, or on other marine resources that are targeted for subsistence consumption (EA, section 3.2; SEA section 3.2), and the proposed action would not change this. The MHI Deep 7 fishery is sustainably managed and does not pollute marine waters, and so does not have adverse effects to human health or on marine life. NMFS and the Council manage the fishery through Federal regulations that are intended to conserve marine resources and habitats to enhance the economic and social well-being of fishing communities, including members of minority populations and low-income populations. The proposed rule would not change the fishery in any manner that would result in changes with respect to impacts on these populations. As a result, the proposed action does not have the potential to have disproportionately high and adverse impacts on minority or low-income populations with respect to the availability of fish, other environmental effects, or health effects (EA, section 5.12).

F. The degree to which the proposed action is likely to result in effects that contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species

known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species

The proposed action would not have the potential to import, introduce, or contribute to the spread of noxious weeds or nonnative invasive species. The fishery is not known to be introducing or spreading non-indigenous species (EA, section 4.5.2; SEA, section 3.5) and the proposed action would not change fishing activities in any way that would result in the potential for non-indigenous species to be introduced or spread. NMFS does not anticipate the proposed action would result in changes in gear types used, areas fished, or fishing methods, as compared to baseline conditions. Thus, the proposed action would not result in the introduction or spread of a non-indigenous species (EA, section 4.5.2).

G. The potential for the proposed action to cause an effect to any other physical or biological resources where the impact is considered substantial in magnitude (e.g., irreversible loss of coastal resources such as marshland or seagrass), or over which there is substantial uncertainty or scientific disagreement

The proposed action is not expected to cause an effect to any other biological or physical resource where the impact is considered substantial in magnitude or over which there is substantial uncertainty or scientific disagreement. With or without management under an ACL or AM, the fishery is not likely or known to be causing substantial environmental effects to physical or biological resources (see section C, above). The fishery has been managed to ensure sustainability and reduce potential effects on marine resources, and the proposed action would not change the conduct of the fishery in a way that would have a substantial effect on resources (see section C, above). Finally, the effects of the proposed action, as analyzed in the EA and SEA, are not highly controversial. An independent review panel, the Council's Scientific and Statistical Committee, and the NMFS Pacific Islands Fisheries Science Center determined that the 2021 assessment update represents the BSIA for use in managing the MHI Deep 7 bottomfish fishery (SEA, section 1.10). There is some uncertainty involved in projecting catch levels and stock abundance in a given year; however, such uncertainty is addressed and accounted for when the Council determines a recommended ACL (SEA, section 3.2.1.1). The proposed action is based on this information and would prevent overfishing and ensure sustainable fishing. Both NMFS and the Council provided opportunities for members of the public and fishery scientists and resource managers to review and comment on the environmental effects analysis. NMFS did not receive comments indicating substantial uncertainty in our effects analysis or that there is substantial scientific disagreement. Given the consensus on the BSIA, accounting of uncertainty in determining the ACL, and participatory management process, the effects of proposed action are not highly uncertain or controversial. (EA, section 1.7; SEA, section 1.10).

Other Actions Including Connected Actions

The proposed action would implement an ACL of 492,000 lb and AMs for three fishing years, and would ensure the sustainability of the MHI Deep 7 bottomfish fishery. The effects analysis for the proposed action takes into consideration all known sources of mortality affecting the Deep 7 bottomfish stock including past, present, and reasonably foreseeable future actions that may affect the fishery. The analysis found no past, present, or reasonably foreseeable actions that could combine or interact with the effects from the proposed action to result in cumulatively significant impacts on Deep 7 bottomfish (EA, section 4.6; SEA, section 3.6).

We considered CEQ's NEPA regulations at 40 CFR 1501.9(e)(1) which provide guidance to agencies as to how to evaluate whether a project is connected to other projects.

We considered whether the proposed action would automatically trigger other actions that may require an environmental impact statement. 40 CFR 1501.9 (e)(1)(i). The proposed action is limited to a harvest limit and fishery management of a single fishery and would not automatically trigger other actions that would require an EIS.

We reviewed whether the proposed action could not proceed unless another action(s) is taken previously or simultaneously. 40 CFR 1501.9 (e)(1)(ii). The proposed measure is independent of other actions.

We reviewed whether the proposed action is an interdependent part of a larger action and whether it depends on the larger action for its justification. 40 CFR 1501.9 (e)(1)(iii). The proposed action has independent utility and is not connected to other projects.

We note in the EA and SEA that uku may be caught incidentally while fishing for Deep 7 bottomfish, and Deep 7 bottomfish fishermen may have switched to targeting uku when the MHI Deep 7 fishery closed in the past. However, these stocks are managed under separate ACLs and AMs, so any displacement from one fishery to another would be regulated. Similarly, NMFS has implemented an in-season management measure to prevent the uku fishery from exceeding its ACL. Therefore, although there is some relationship between the fisheries, they are not interconnected as provided in the CEQ Regulations and the environmental effects of the specifications may be considered separately.

NMFS considered additive and synergistic effects of the proposed action on marine mammal stocks and ESA-listed species and critical habitat in consideration of other activities by NMFS and others on these same stocks, population segments and species (EA, 4.6.2.2; SEA, sections 1.9 and 3.2.3). Our analysis found that the proposed action would not have the potential to cause new effects on marine mammals or ESA-listed species compared with those of the status quo alternative, even when we considered other factors affecting these stocks, populations segments, and species (EA, 4.6.2.2; SEA, section 3.6).

In addition to cumulative effects on biological resources, the 2019 EA also considered cumulative effects on physical resources (section 4.6.1), the socio-economic setting (section 4.6.3), the management setting (section 4.6.4), and other considerations including climate change (section 4.6.5). The analysis in the EA found no past, present, or reasonably foreseeable actions that could combine or interact with the effects from the proposed action to result in cumulatively significant impacts on any of these aspects of the human environment (EA, section 4.6). No new information was available for the 2021 SEA that would affect this analysis and therefore, we concluded the proposed action would have no potential for additive or synergistic effects (SEA, section 3.6).

Mitigation and Monitoring

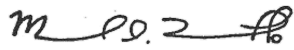
Mitigation and monitoring are an integral part of the proposed action as AMs, which are intended to prevent adverse effects of the MHI Deep 7 bottomfish fishery on bottomfish stocks. As described in the EA (section 1.2) and SEA (section 1.2), NMFS and the Council will continue to

monitor Deep 7 bottomfish catches against the ACL in the MHI. When NMFS projects that the fishery will reach the limit, NMFS will close the fishery in Federal waters. Compliance with the in-season AMs is an enforceable requirement under section 50 CFR 665.211 of the regulations.

The action of NMFS reducing an ACL in a subsequent fishing year by the amount of an overage in a given year is also a feature of the proposed action that would mitigate the potential effect of an overage.

DETERMINATION

The CEQ NEPA regulations, 40 CFR 1501.6, direct an agency to prepare a FONSI when the agency, based on the EA for the proposed action, determines not to prepare an EIS because the action will not have significant effects. In view of the information presented in this document and the analysis contained in the supporting 2019 EA and 2021 SEA, it is hereby determined that the proposed action will not significantly impact the quality of the human environment. The 2019 EA and 2021 SEA are hereby incorporated by reference. In addition, all beneficial and adverse impacts of the proposed action as well as mitigation measures have been evaluated to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.



Michael D. Tosatto
Regional Administrator, Pacific Islands Regional Office

12/21/2021

Date

Attachments (2)