

## **De Facto IFQ in the Northwestern Hawaiian Islands Bottomfish Fishery, Who's Criteria Apply?**

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The Clinton Executive Order 13196 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve has initiated an ongoing and contentious process of determining future levels of bottomfish fishing effort in the NHWI. The EO stated that there would be fishing caps on annual aggregate level of take for the bottomfish fishery and associated pelagic fishery as a whole and individual caps on each bottomfish fisherman's LE permit of the average aggregate take of the five years prior to December 4, 2000. These potential future caps are de facto IFQ and they appear to be nontransferrable. The fishery has continued to be managed through the Western Pacific Fishery Council's Bottomfish FMP's limited entry regime under the Magnuson Stevens Act as the National Marine Sanctuary designation process has struggled forward. MSA gives fishery council's statutory authority to develop fishery management plans. The National Marine Sanctuaries Act (NMSA) allows fishery councils to develop proposed regulations for proposed sanctuaries, but these must be consistent with the goals and objectives of NMSA and sanctuary being developed. If they are not, the Secretary of Commerce can develop fishery regulations for the proposed sanctuary.

Under the Clinton EO a Reserve Advisory Council was created with limited representation by bottom fish fishermen and non-voting representation by the Western Pacific Council. The Reserve Advisory Council has acted in an advisory capacity to the Sanctuaries program within NOS. Fishermen on the Reserve Advisory Council have complained that their voice is not being listened to. Some Reserve Advisory Council members have complained that the Western Pacific Fishery Council has been trying to affect the process as it has moved forward in developing its own proposed fishery regulations for the future sanctuary. Some advocacy groups have engaged in active PR campaigns criticizing the Fishery Council and its mandated process under MSA.

As a part-time anthropological observer of this process, it is my view that we have two distinct "cultures" or even two "tribes" operating here under two culturally different branches of NOAA, NMFS and NOS. The two branches operate under two quite distinct statutes, MSA and NMSA, with distinct statutory mandates. Staff members in the two branches may have similar training even if they have somewhat different values and experience. All probably consider themselves to be responsible individuals working to sustain and even enhance marine resources. The same can probably also be said of the concerned citizens and the natural and social scientists who volunteer their time as experts and advisors. The differences may even come down to subtle differences in understanding of basic terms and concepts, especially when there is a lack of shared operating definitions as in terms like "ecosystem integrity" and "natural character" of ecosystems.

It appears that these “two cultures” will continue to have intercultural mis-communication difficulties and may have real difficulty in reaching intercultural accommodation during the sanctuary designation process. Both “cultures” support the intent of the sanctuary and the sanctuary designation process. Representatives of both cultures attend meetings together, and communicate intermittently by memo. Representatives of both cultures claim a “science base” for their positions. The potential for real accommodation and co-management in the NWHI is further complicated by the presence of both state and other federal interests (Hawaii State and USFWS) around emergent lands, as well as NGO’s. Such accommodation is also complicated by other past and potential future fisheries that are beyond the scope of this discussion.

In 1989, The bottomfish fisheries in the NWHI were placed under partial limited entry with a far zone (Hoomalu) for bigger boats under strict limited entry, (7 permits) and a near zone accessible to smaller boats (Mau) as a qualifying zone with permits but open access. In 1999, the Mau zone was placed under limited entry with non-transferable permits and a use it or lose it condition on the permits. The Mau zone has 8 permits with an additional two unfilled Community Development Program permits for Hawaiian entities. In both Hoomalu and Mau zone amendment development, some fishermen had asked for limited entry and were involved on the design of the LE program. In both cases economic concerns were more important than stock condition concerns, and the estimated stock conditions for target species have generally shown takes at 50% of MSY or lower. There are some economic discards but no observed impact on protected species like monk seals. The fishery targets deep slope eteline snappers but occasionally works in somewhat shallower waters. One of the obvious areas of contention between the two cultures in the sanctuary development process has been the depth contour for fishing exclusion zones.

When the Mau zone task force began developing the amendment to create limited entry, there were a large number of latent permits and some newly active fishermen. The task force utilized a points system based on past participation to try to achieve equity between long term permit holders and relative newcomers. The non-transferable permit and use it or lose it conditions were meant to be temporary, until the number of active permits ratcheted down to the economically desirable number. When the EO came into being Council plans to allow for new entry into the fishery as people gave up their permits was put on hold. There has been some attrition since the EO as some high-liners have left the fishery. There are currently only 4 active participants in the Hoomalu zone and five in the Mau zone. Those who have expressed interest in entering the Mau and/or Hoomalu zone fisheries continue to wait as the Sanctuary designation process is ongoing.

The Fishery Council has held scoping meetings to have public input into the range of preliminary alternatives it would like to consider proposing for the Sanctuary. The Council appears reluctant to choose a preferred alternative without the full analysis and scoping of an EIS, but the EIS for the Sanctuary designation is being contracted out by NOS. The Sanctuary Goals and Objectives for the Proposed NWHI Sanctuary appear to allow some leeway for a level of bottomfish fishing to continue, at least for a while in parts of the area. Goal 1. “Protect, preserve, maintain and where appropriate restore natural biological communities” focuses on resource protection. Goal 2. “Provide for comprehensive and coordinated management that recognizes.....existing management regimes and stakeholder communities” appears to allow more leeway for Council

proposals to continue some level of bottomfishing. Goals 3 and 4 are to minimize impact and enhance awareness. Goal 5 is to support Native Hawaiian cultural religious and subsistence practices, a goal also supported by the Council. Goal 6 is to support long term monitoring, a goal not inconsistent with continued bottomfish fishing and reporting. Goal 7 is to maintain “ecosystem integrity” by limiting and controlling fishing activities using an ecosystem-based management approach and to maximize ecosystem protection while minimizing adverse socioeconomic impacts.

The Fishery Management Council has proposed a somewhat parallel goal to maintain “ecosystem integrity” by applying ecosystem based management and research principles to fishing activities and to sustain ecosystem protection while minimizing adverse socioeconomic impacts. Specific objectives for bottomfish include protecting ecologically valuable areas from damage from fishing consistent with available biological and ecological information and maintaining “ecosystem integrity” by controlling harvest consistent with available biological and ecological information.

The Council selects its preferred alternative at its March 14-17 2005 meeting and is expected to propose it to the Sanctuaries Program. Should the differences between the “two cultures” that have prevailed so far continue then reconciling the two mandates and the two statutes may be difficult. The basic question still centers around the size and location of the areas that will be available for bottomfishing. Continued bottomfish fishing at some level may be a more efficient way of using fishery dependent data to monitor stock changes and conditions as the current low level of fishing is redirected or reduced.

Should a final sanctuary proposal move forward with the individual bottomfish permittee caps proposed then defacto non-transferrable IFQ will have been created. Will the criteria used in developing these caps be based solely on reported catch for the average catch of the five years preceding December 2000? Will the allocations be accurate? Will they be equitable? Will they be based on poundage or numbers of individual fish taken? How will fishermen monitor their catches to keep catch ratios equivalent to those in the past? Could high-grading become a problem? What happens to the permits and poundage associated with the fishermen who left the fishery since the EO and Sanctuary designation process created uncertainty in the fishery?

As current fishermen age, there may be no provision for continuation in the fishery by children or other family members, if the permits remain non-transferable. If permits become transferable in a form that will keep the fishery within established caps, what will be the criteria for permit transfers? The Council’s existing FMP has non transferable permits but uses a points system to allow new entry into the Hoomalu zone as existing permittees leave. A similar new entry provision has been proposed for the Mau zone that could use Main Hawaiian islands catches to qualify. Both of these provisions respect and use historical participation as a qualifying criteria rather than willingness to pay for permits. Will the Sanctuaries program, the other “Culture” be willing to consider that or will they consider other criteria? Should investment levels, interest in transferring permits within fishing families or other criteria like an auction apply? Who’s criteria will apply and will the Secretary have to decide?

Without permit transferability, the long term trend may well be a decline and then an end to this well managed fishery and a loss of fresh bottomfish to the Hawaii market reducing that net benefit to the nation. Such a potential decline may well have transfer effects contributing to overfishing in other less well managed parts of the Pacific Islands. The socioeconomic impact of the proposed sanctuary on the bottomfishing community and the larger Hawaii community needs to be adequately assessed through a proper EIS as the Sanctuary designation process goes forward. Can there be agreement over the specifics of the terms and meanings employed between the “two cultures” and in the public evaluation of such an EIS. Does the contractor chosen to do the EIS make a difference?

Let’s presume that the Sanctuaries program is truly willing to allow a level bottomfishing to continue in non-sensitive areas for an indefinite period. In my view, the basic problems with the Sanctuaries program proposals to date are the hard vessel/fishermen quotas and the lack of transferability of permits or any other mechanism for new entry. From a Council and social science perspective, the Sanctuaries program doesn’t have much experience in managing fisheries. Defacto non-transferrable IFQ with no new entry provisions, no matter who’s IFQ criteria apply, lead to a predictable decline and end to a fishery.