

COMMENTS OF ENVIRONMENTAL DEFENSE  
CONCERNING  
THE DRAFT EIS FOR BOTTOMFISH AND SEAMOUNT GROUND FISH  
FISHERIES IN THE WESTERN PACIFIC REGION

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Environmental Defense is a leading environmental organization combining science, law, and economics to achieve lasting solutions to environmental problems, with over 2,000 members in Hawai`i and over 300,000 members throughout the Mainland United States. Our comments on the “Draft EIS for Bottomfish and Seamount Groundfish Fisheries in the Western Pacific Region” pertain to the economically troubled Northwestern Hawaiian Islands (NWHI) bottomfish fishery which apparently consists of 9 vessels and provides employment for approximately 25 people.<sup>1</sup>

**We are deeply concerned that almost three years after the establishment of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), the National Marine Fisheries Service (NMFS) has failed to amend the Bottomfish and Seamount Groundfish Fishery Management Plan (Bottomfish FMP) to comply with the Executive Orders which established the NWHI Reserve.**

**The proposed alternative titled “No Action - Continuation of Current Management Regime” fails to recognize that the current management regime – i.e. the “no action alternative” -- includes Executive Order conservation measures and fishing prohibitions and encompasses the rejection by NMFS of WPRFMC’s Coral Reef Ecosystem FMP and Precious Coral FMP.**

**We note with alarm that WPRFMC has, once again, published a purported summary of Executive Order 13178 as modified by Executive Order 13196 which is factually incorrect and disregards the purpose of EO 13196 (i.e. “to make permanent Reserve Preservation Areas”).<sup>2</sup>**

We urge NMFS to take immediate steps to ensure that:

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<sup>1</sup> Western Pacific Regional Fishery Management Council. “Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region: 2001 Annual Report,” April, 2003: “The Ho`omalau Zone is a limited entry zone with 4 vessels participating in 2001; 5 vessels fished the Mau Zone in the same year.” Page 3-8. DEIS, pg 2-29, Table 2-3 indicates that the bottomfish fishery creates “the equivalent of 25 full-time jobs”. Page 2-29 indicates that the “immediate cessation of bottomfish fishing in the NWHI would lead to “minimal” impacts on Hawai`i’s economy “as the contribution of the NWHI bottomfish fishery to overall economic activity in Hawai`i is small.”

<sup>2</sup> Western Pacific Regional Fishery Management Council. “DEIS for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region”, pg B-17. This section purports to represent a combination of

- 1) This deeply flawed DEIS for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific is amended to bring it into full compliance with Executive Order 13178 as modified by 13196.
- 2) The proposed “No Action – Continuation of Current Management Regime” alternative reflects the current management regime for NWHI bottomfishing, namely the Executive Order requirements for closed areas, catch and effort limits, gear limitations, and other conservation measures and the rejection by NMFS of portions of FMPs , such as the CREFMP and the precious coral FMP, which are not consistent with the EOs.
- 3) We urge the Department of Commerce to issue, prior to finalizing the Bottomfish DEIS, a Federal Register notice finalizing the bottomfish caps specified under Executive Order 13178 as modified by 13196, reiterated in the NMFS Federal Register notice of August 5, 2003, and as submitted to the Department of Commerce by the Reserve Advisory Council over eighteen months ago.
- 4) We urge NMFS to specify the management and enforcement costs associated with the NWHI bottomfish fishery. The DEIS specifies that administrative and enforcement costs would either increase, not change or decrease under different alternatives, but no dollar amount is specified. Given the low economic value of the fishery it is in the public interest to have a clear cost-benefit analysis relating management and enforcement costs to economic status of the fishery.

**Background:**

In November 2000, prior to the issuance of Executive Orders 13178 and 13196, the Western Pacific Regional Fishery Management Council (WPRFMC) proposed a preliminary draft DEIS for the Bottomfish FMP with four proposed Alternatives<sup>3</sup>:

- 1) “No Action – Continuation of Current Management Regime”
- 2) “Immediate Cessation of Bottomfish Fishing in the NWHI”
- 3) “Phase-out of Bottomfish Fishing in the NWHI”
- 4) “Adaptive Management through Zoning”

The November 2000 “No Action – Continuation of Current Management Regime” alternative reflected the management regime existing prior to the establishment of the NWHI Reserve.

On November 17, 2000, WPRFMC published a “Draft Measure to Establish Eligibility Criteria for New Entry into the NWHI Mau Zone Limited Access System” which found that “the economic performance of Mau zone vessels has been generally poor during the 1990’s” with analyses suggesting that vessels experienced significant annual losses, the fishery experienced high rates of turnover and that “new entrants are presumably unaware of economic conditions prevailing in the fishery. As noted in Amendment 5, vessels displaced from overfished U.S. mainland fisheries have steadily arrived in Hawai`i on a “look-see” basis.”<sup>4</sup> The break-even calculations suggested that “the average vessel would have to fish 107 days per year or approximately three times the current average. At this level of effort the fishery

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Executive Orders 13178 and 13196 and claims that the two EOs establish Reserve Preservation Areas “until some or all are made permanent after adequate public review and comment.” In fact, public comment occurred prior to the issuance of EO 13196 which established the permanency of the RPA closures. A similar “error” was made in the February 2002 Draft Reserve Operations Plan and was corrected by NOS after public outcry.

3. WPRFMC, “Preliminary Draft EIS for Bottomfish and Seamount Groundfish Fishery in the Western Pacific Region,” Table 2-2, page 2-19, November 2, 2000

<sup>4</sup> WPRFMC, “Draft Measure to Establish Eligibility Criteria for New Entry into the NWHI Mau Zone Limited Access System,” November 17, 2000, pg. 12-13

could only support three of four vessels.”<sup>5</sup> The report continued on to note that “one would expect prices to have increased in the 1990’s because the total volume of locally caught bottomfish declined. This did not occur, perhaps due to competition from fish imported into Hawai’i.”<sup>6</sup> The report also noted that “Native Hawaiians have generally not participated in these fisheries.”<sup>7</sup>

In December, 2000 and January, 2001 Executive Orders 13178 and 13196 established the Reserve which contained small protected areas permanently closed to bottomfishing and imposed fishing caps, gear restrictions and other restrictions on fisheries within Reserve boundaries. The EOs mandated an increase in the number of bottomfish permits in order to set aside two permits for Native Hawaiian use. Note that in May 1999, Native Hawaiian members of WPRFMC’s Native and Indigenous Rights Advisory Panel noted that the endangered Hawaiian Monk Seal population had declined precipitously over the last forty years and recommended that the two permits they had fought hard to obtain for the Native Hawaiian community “not be used until they are certain it will not contribute to the extinction” of the monk seal.<sup>8</sup>

In April 2001, WPRFMC published average income statements for NWHI bottomfish vessel operations in 2000 indicating that the average vessel income for Ho`omalau Zone fishers was negative \$38,047 (i.e. a net loss) and negative \$7796 for Mau Zone vessels.

In March 2002, the National Marine Fisheries Service (NMFS) rejected portions of WPRFMC’s proposed Precious Coral FMP for the NWHI on the basis that the measures were not consistent with the EOs.

In May 2002, the Reserve Council requested that NOS insert detailed information on bottomfish caps into the Reserve Operations Plan. The Reserve Council’s recommendations were to set caps for each “permitter’s average catch over those years (of the five year period preceding December 4, 2000) in which they were active.”<sup>9</sup>

In May 2002, the Reserve Council expressed concern about the “significant error made in the Appendix in the document titled ‘Executive Order 13178 as Modified by Executive Order 13196’ which purports to represent a combination of the two NWHI Executive Orders. This document seems to indicate that the NWHI RPAs are not permanent when in fact the only stated purpose of EO 13178 is: “Sec.2 Purpose. The purpose of this order is to amend Executive Order 13178 and to make permanent Reserve Preservation Areas, as modified below, to ensure the comprehensive, strong, and lasting protection of the resources of the Northwestern Hawaiian Islands.”<sup>10</sup> [Note that the identical “error” now appears in the current DEIS on page B 17.]

In June 2002, NMFS rejected the portions of the proposed “Coral Reef Ecosystem” FMP on the basis that this fishery was inconsistent with the Executive Orders which had established the Coral Reef Ecosystem Reserve.

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<sup>5</sup> ibid pg 13

<sup>6</sup> ibid pg 13

<sup>7</sup> ibid pg 14

<sup>8</sup> Press Release, “Native Hawaiians Delay Use of Fishing Permits to Save the Endangered Hawaiian Monk Seals,” May 7, 1999.

<sup>9</sup> NWHI Reserve Advisory Council, “Reserve Advisory Council comments on draft Reserve Operations Plan, February 2002”, May 16, 2002

<sup>10</sup> NWHI Reserve Advisory Council, “Reserve Advisory Council comments on draft Reserve Operations Plan, February 2002”, May 16, 2002

On December 2, 2002 the Reserve Council recommended to the Department of Commerce that the proposed caps for Native Hawaiian bottomfish permits, which had never been utilized, be set “at the level of the highest cap established for existing permitted fishers that are grandfathered into the Reserve.”<sup>11</sup>

In December 10, 2002 the Director of the National Marine Sanctuary Program indicated that “We are developing a Federal Register notice that will provide the NMSP interpretation of the Executive Orders’ commercial fishing cap measures for public comment.”<sup>12</sup>

In April, 2003, WPRFMC published its 2001 Annual Report titled “Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region” which indicated a 17% increase in number of bottomfish fishing trips in the Mau Zone and an 11% increase in trips to the Ho`omalulu Zone, during the year after the Executive Order caps on effort and take had been put in place. The WPRFMC analysis found that catch per unit effort dropped by 13% in the Mau Zone and by 9.7% in the Ho`omalulu Zone during that period.

On August 5, 2003 NMFS published a federal register notice underscoring the fact that “the Executive Orders are currently in effect, including Reserve Preservation Areas and certain other conservation measures that either completely prohibit fishing or allow fishing in accordance with restrictions that are applicable in the Reserve.”<sup>13</sup> The Executive Orders specify that fishing effort and take is capped at existing levels and, as reiterated in the August 5, 2003 Federal Register notice, in the case of bottomfish “the annual aggregate level for each permitted bottomfisher shall be that permittee’s individual average taken over the 5 years preceding December 4, 2000, as determined by the Secretary” and that the Secretary “may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits.”

On October 13, 2003 WPRFMC’s Draft EIS for Bottomfish and Seamount Groundfish Fisheries in the Western Pacific was circulated for public comment. The four proposed Alternatives summarized in Table 2-3 are as follows, almost identical to the alternatives proposed almost three years ago, prior to the issuance of the Executive Orders creating the NWHI Coral Reef Ecosystem Reserve:

- 1) “No Action – Continuation of Current Management Regime”
- 2) “Immediate Cessation of Bottomfish Fishing in the NWHI”
- 3) “Phase-out of Bottomfish Fishing in the NWHI”
- 4) “Adaptive Management through Zoning

The “No Action – Continuation of Current Management Regime” alternative has not been modified to reflect the fact that, as underscored in the August 5, 2003 NMFS Federal Register notice “the Executive Orders are currently in effect” and the current management regime for bottomfishing includes Reserve Preservation Areas and “other conservation measures that either completely prohibit fishing or allow fishing in accordance with restrictions that are applicable in the Reserve.”<sup>14</sup>

The “Summary and Comparison of Impacts by Alternative” of the current DEIS as outlined in Table 2-3 on pages 2-26 – 2-36 barely differs from the table produced prior to the EOs and distributed to the public in November 2000. A comparison of these two tables is instructive. Both the 2000 and 2003 versions are similar in that that their “no action / continuation current management regime[s]” do not recognize the

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<sup>11</sup> Reserve Council letter: “Re: Recommendation on Caps for the Two Limited Entry Bottomfish Permits Reserved for the Hawaiian Community Development Program”, December 2, 2002.

<sup>12</sup> Letter from Daniel Basta to Tim Johns, Chair, Reserve Advisory Council, 12/10/02.

<sup>13</sup> Federal Register, Vol. 68, No. 150, August 5, 2003 pg 46113

<sup>14</sup> Federal Register, Vol. 68, No. 150, August 5, 2003 pg 46113

December 2000/January 2001 Executive Orders. This is understandable for the November 2000 document published prior to the issuance of the Executive Orders. It is incomprehensible in a document published three years after the EOs are in place. Inexplicably, the October 2003 Table 2-3 reduces the number of permit holders under the “no action” alternative from 17 permit holders in November 2000 to 12 permit holders in October 2003, the harvest from “311,000 to 443,000 lbs of bottomfish in the NWHI with an ex-vessel value of \$894,000 to \$1,513,000” in 2000 to “about 300,000 lb with an ex-vessel value of about \$1M” in October 2003 and yet claims that in both 2000 and 2003 the fishery generates exactly the same amount of income and jobs: “\$1,382,747 of output (production) and \$482,218 of household income to state economy and create[s] the equivalent of 25 full time jobs”.<sup>15</sup>

In 2003, WPRFMC has added to what is otherwise largely the same summary of alternatives as in 2000, the claim that the alternatives which call for the immediate cessation of bottomfishing and the phaseout of bottomfishing “could have a disproportionately high and adverse effect on minority populations.” We urge NMFS to specify the details of this “disproportionately high and adverse effect” – number of individuals affected, specific “minority populations”, country of citizenship, etc.

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<sup>15</sup> WPRFMC, Preliminary Draft DEIS, November 2000 pg 2-22; WPRFMC Draft DEIS, October 2003, pg 2-29.