

# Western Pacific Pelagic Fisheries U.S. Territorial Catch and Fishing Effort Limits

## Summary and Instructions

### DRAFT

These instructions summarize how to comply with regulations published in the *Federal Register* on [insert date and FR reference]. For the complete set of pelagic fishing regulations in the western Pacific, refer to Title 50, Code of Federal Regulations, Part 665 (50 CFR 665).<sup>1</sup>

Regulations are subject to change, so fishermen must familiarize themselves with the most recent changes and are responsible to comply with them. Any discrepancies between these instructions and the regulations will be resolved in the favor of the regulations published in the *Federal Register* ([insert FR reference and date]).

A specified fishing agreement is a voluntary agreement between a U.S. participating territory and a U.S. fishing vessel(s), and allows a territory to allocate a portion of a specified catch or effort limit to the vessel(s) identified in the agreement.

Each fishing year, which begins January 1, NMFS will publish in the *Federal Register* a notice of the proposed catch or effort limit specification applicable to each U.S. participating territory and the portion of the limit that each territory may allocate to fishing vessels identified in a specified fishing agreement. After considering public comments, NMFS will publish in the *Federal Register* the final catch or effort limit specification. A U.S. participating territory may submit a specified fishing agreement to NMFS at any time during the fishing year.

Specifically, this rule requires a U.S. participating territory that is interested in allocating a portion of its specified catch or effort limits to submit to NMFS and the Council a specified fishing agreement that includes the following information:

1. Identify the vessel(s) to which the fishing agreement applies, along with documentation that such vessel(s) possesses a valid permit issued under 50 CFR 665.801;
2. Identify the amount (weight) of the western Pacific pelagic MUS to which the fishing agreement applies, if applicable;
3. Identify the amount of fishing effort (for example, number of longline sets or hooks deployed) to which the fishing agreement applies, if applicable;
4. Be signed by an authorized official of the applicable U.S. participating territory, or designated representative;
5. Be signed by each vessel owner or designated representative; and
6. Satisfy either (a) or (b) below:
  - a. Require the identified vessels to land or offload catch in the ports of the U.S. participating territory to which the fishing agreement applies; or
  - b. Specify the amount of monetary contributions that each vessel owner in the agreement, or his or her designated representative, will deposit into the Western

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<sup>1</sup> <http://www.ecfr.gov/cgi-bin/text-idx?SID=36a1f9560fe2c3d118360e8e0395a868&node=50:13.0.1.1.2&rqn=div5>

Pacific Sustainable Fisheries Fund; and

7. Be consistent with the Pelagics FEP and implementing regulations, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable laws; and
8. Shall not confer any right of compensation to any party enforceable against the United States should action under such agreement be prohibited or limited by NMFS pursuant to its authority under the Magnuson-Stevens Act or other applicable laws.

This rule also requires a U.S. participating territory to notify NMFS and the Council in writing of any changes in the identity of fishing vessels to which the specified fishing agreement applies within 72 hours of the change.

NMFS will use the information provided in a specified fishing agreement to determine whether or not the vessels identified in the agreement possess a valid Federal fishing permit issued under 50 CFR 665.801. NMFS will also use the information to ensure that catches or fishing effort made by vessels identified in an specified fishing agreement are properly attributed to the territory to which the agreement applies, and to inform vessels when a limit is projected to be reached, and the restrictions NMFS will impose to prevent exceeding a limit.

NMFS will also use the information to determine whether the fishing agreement includes a landing requirement or a deposit in support of implementation of a marine conservation plan and, thus, supports fisheries development in the territories as intended by Section 113. NOAA Office of Law Enforcement and the U.S. Coast Guard may also use the information provided in the specified fishing agreements ensure vessels identified in the agreements comply with catch and fishing effort limit restrictions.

NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

### **Definitions.**

Effective date means the date upon which the Regional Administrator provides written notice to the authorized official or designated representative of the U.S. participating territory that a specified fishing agreement meets the requirements of this section.

Regional Administrator means the Regional Administrator, Pacific Islands Region, NMFS, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, tel 808-725-5000, fax 808-973-2941, or a designee.

U.S. participating territory means a U.S. participating territory to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come

into force, for the United States), and includes American Samoa, Guam, and the Northern Mariana Islands.

WCPFC means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, including its employees and contractors.

Western Pacific Fishery Management Council (Council) means 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226.

### **§ 665.819 U.S. Territorial catch and fishing effort limits.**

#### **(a) General.**

(1) Notwithstanding § 665.4, if the WCPFC agrees to a catch or fishing effort limit for a stock of western Pacific pelagic MUS that is applicable to a U.S. participating territory, the Regional Administrator may specify an annual or multi-year catch or fishing effort limit for a U.S. participating territory, as recommended by the Council, not to exceed the WCPFC adopted limit. The Regional Administrator may authorize such U.S. participating territory to allocate a portion, as recommended by the Council, of the specified catch or fishing effort limit to a fishing vessel or vessels holding a valid permit issued under § 665.801 through a specified fishing agreement pursuant to paragraph (c) of this section.

(2) If the WCPFC does not agree to a catch or fishing effort limit for a stock of western Pacific pelagic MUS applicable to a U.S. participating territory, the Council may recommend that the Regional Administrator specify such a limit that is consistent with the Pelagics FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws. The Council may also recommend that the Regional Administrator authorize a U.S. participating territory to allocate a portion of a specified catch or fishing effort limit to a fishing vessel or vessels holding valid permits issued under § 665.801 through a specified fishing agreement pursuant to paragraph (c) of this section.

(3) The Council shall review any existing or proposed catch or fishing effort limit specification and portion available for allocation at least annually to ensure consistency with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws. Based on this review, at least annually, the Council shall recommend to the Regional Administrator whether such catch or fishing effort limit specification or portion available for allocation should be approved for the next fishing year.

(4) The Regional Administrator shall review any Council recommendation pursuant to paragraph (a) of this section and, if determined to be consistent with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws, shall approve such recommendation. If the Regional Administrator determines that a recommendation is inconsistent with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions and other applicable laws, the Regional Administrator would disapprove the recommendation and provide the Council with a written explanation of the reasons for disapproval. If a catch or fishing effort limit specification or allocation limit is disapproved, or if the Council recommends and NMFS approves no catch or fishing effort limit specification or allocation limit, no specified fishing agreements as described in paragraph (c) of this section will be accepted for the fishing year covered by such action.

**(b) Procedures and timing.**

(1) After receiving a Council recommendation for a catch or fishing effort limit specification, or portion available for allocation, the Regional Administrator will evaluate the recommendation for consistency with the Pelagics FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

(2) The Regional Administrator will publish in the *Federal Register* a notice and request for public comment of the proposed catch or fishing effort limit specification and any portion of the limit that may be allocated to a fishing vessel or vessels holding a valid permit issued under § 665.801.

(3) The Regional Administrator will publish in the *Federal Register*, and will use other reasonable methods to notify permit holders, a notice of the final catch or fishing effort limit specification and portion of the limit that may be allocated to a fishing vessel or vessels holding valid permits issued under 50 CFR § 665.801. The final specification of a catch or fishing effort limit will also announce the deadline for submitting a specified fishing agreement for review as described in paragraph (c) of this section. The deadline will be no earlier than 30 days after the publication date of the *Federal Register* notice that specifies the final catch or fishing effort limit and the portion of the limit that may be allocated through a specified fishing agreement.

**(c) Specified fishing agreements.** A specified fishing agreement means an agreement between a U.S. participating territory and the owner or a designated representative of a fishing vessel or vessels holding a valid permit issued under § 665.801 of this part. An agreement provides access to an identified portion of a catch or fishing effort limit and may not exceed the amount specified for the territory and made available for allocation pursuant to paragraph (a) of this section. The identified portion of a catch or fishing effort limit in an agreement must account for recent and anticipated harvest on the stock or stock complex or fishing effort, and any other valid agreements with the territory during the same year not to exceed the territory's catch or fishing effort limit or allocation limit.

(1) An authorized official or designated representative of a U.S. participating territory may submit a complete specified fishing agreement to the Council for review. A complete specified fishing agreement must meet the following requirements:

(i) Identify the vessel(s) to which the fishing agreement applies, along with documentation that such vessel(s) possesses a valid permit issued under § 665.801;

(ii) Identify the amount (weight) of western Pacific pelagic MUS to which the fishing agreement applies, if applicable;

(iii) Identify the amount of fishing effort to which the fishing agreement applies, if applicable;

(iv) Be signed by an authorized official of the applicable U.S. participating territory, or designated representative;

(v) Be signed by each vessel owner or designated representative; and

(vi) Satisfy either paragraph (c)(1)(vi)(A) or (B) of this section:

(A) Require the identified vessels to land or offload catch in the ports of the U.S. participating territory to which the fishing agreement applies; or

(B) Specify the amount of monetary contributions that each vessel owner in the agreement, or his or her designated representative, will deposit into the Western Pacific Sustainable Fisheries Fund;

(vii) Be consistent with the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws; and

(viii) Shall not confer any right of compensation to any party enforceable against the United States should action under such agreement be prohibited or limited by NMFS pursuant to its authority under Magnuson-Stevens Act, or other applicable laws.

(2) Council review. The Council, through its Executive Director, will review a submitted specified fishing agreement to ensure that it is consistent with paragraph (1) of this section. The Council will advise the authorized official or designated representative of the U.S. participating territory to which the agreement applies of any inconsistency and provide an opportunity to modify the agreement, as appropriate. The Council will transmit the complete specified fishing agreement to the Regional Administrator for review.

(3) Agency review. (i) Upon receipt of a specified fishing agreement from the Council, the Regional Administrator will consider such agreement for consistency with paragraph (c)(1) of this section, the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws.

(ii) Within 30 calendar days of receipt of the fishing agreement from the Council, the Regional Administrator will provide the authorized official or designated representative of the U.S. participating territory to which the agreement applies and the signatory vessel owners or their designated representatives with written notice of whether the agreement meets the requirements of this section. The Regional Administrator will reject an agreement for any of the following reasons:

(A) The agreement fails to meet the criteria specified in this subpart;

(B) The applicant has failed to disclose material information;

(C) The applicant has made a material false statement related to the specified fishing agreement;

(D) The agreement is inconsistent with the Pelagics FEP, implementing regulations, the Magnuson-Stevens Act, or other applicable laws; or

(E) The agreement includes a vessel identified in another valid specified fishing agreement.

(iii) The Regional Administrator, in consultation with the Council, may recommend that specified fishing agreements include such additional terms and conditions as are necessary to ensure consistency with the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws.

(iv) The U.S. participating territory must notify NMFS and the Council in writing of any changes in the identity of fishing vessels to which the specified fishing agreement applies within 72 hours of the change.

(v) Upon written notice that a specified fishing agreement fails to meet the requirements of this section, the Regional Administrator may provide the U.S. participating territory an opportunity to modify the fishing agreement within the time period prescribed in the notice. Such opportunity to modify the agreement may not exceed 30 days following the date of written notice. The U.S. participating territory may resubmit the agreement according to paragraph (c)(1) of this section.

(vi) The absence of the Regional Administrator's written notice within the time period specified in paragraph (c)(3)(ii) of this section or, if applicable, within the extended time period specified in paragraph (c)(3)(v) of this section shall operate as the Regional Administrator's finding that the fishing agreement meets the requirements of this section.

(4) Transfer. Specified fishing agreements authorized under this section are not transferable or assignable, except as allowed pursuant to paragraph (c)(3)(iv) of this section.

(5) A vessel shall not be identified in more than one valid specified fishing agreement at a time.

(6) Revocation and suspension. The Regional Administrator, in consultation with the Council, may at any time revoke or suspend attribution under a specified fishing agreement upon the determination that either: Operation under the agreement would violate the requirements of the Pelagics FEP or implementing regulations, the Magnuson-Stevens Act, or other applicable laws; or the U.S. participating territory fails to notify NMFS and the Council in writing of any changes in the identity of fishing vessels to which the specified fishing agreement applies within 72 hours of the change.

(7) Cancellation. The U.S. participating territory and the vessel owner(s), or designated representative(s), that are party to a specified fishing agreement must notify the Regional Administrator in writing within 72 hours after an agreement is cancelled or no longer valid. A valid notice of cancellation shall require the signatures of both parties to the agreement. All catch or fishing effort attributions under the agreement shall cease upon the written date of a valid notice of cancellation.

(8) Appeals. An authorized official or designated representative of a U.S. participating territory or signatory vessel owners or their designated representatives may appeal the granting, denial, conditioning, or suspension of a specified fishing agreement affecting their interests to the Regional Administrator in accordance with the permit appeals procedures set forth in 665.801(o) of this subpart.

(9) Catch or fishing effort attribution procedures. (i) For vessels identified in a valid specified fishing agreement that are subject to the U.S. bigeye tuna limit and fishing restrictions set forth in 50 CFR part 300, subpart O, NMFS will attribute catch made by such vessels to the applicable U.S. participating territory starting seven days before the date NMFS projects the annual U.S. bigeye tuna limit to be reached, or upon the effective date of the agreement, whichever is later.

(ii) For U.S. fishing vessels identified in a valid specified fishing agreement that are subject to catch or fishing effort limits and fishing restrictions set forth in this subpart, NMFS will attribute catch or fishing effort to the applicable U.S. participating territory starting seven days before the date NMFS projects the limit to be reached, or upon the effective date of the agreement, whichever is later.

(iii) If NMFS determines catch or fishing effort made by fishing vessels identified in a specified fishing agreement exceeds the allocated limit, NMFS will attribute any overage of the limit back to the U.S. or Pacific island fishery to which the vessel(s) is registered and permitted in accordance with the regulations set forth in 50 CFR part 300, subpart O and other applicable laws.

**(d) Accountability measures.**

(1) NMFS will monitor catch and fishing effort with respect to any territorial catch or fishing effort limit, including the amount of a limit allocated to vessels identified in a valid specified fishing agreement, using data submitted in logbooks and other information. When NMFS projects a territorial catch or fishing effort limit or allocated limit to be reached, the Regional Administrator shall publish notification to that effect in the *Federal Register* at least

seven days before the limit will be reached and shall use other reasonable means to notify permit holders.

(2) The notice will include an advisement that fishing for the applicable pelagic MUS stock or stock complex, or fishing effort, will be restricted on a specific date. The restriction may include, but is not limited to, a prohibition on retention, closure of a fishery, closure of specific areas, or other catch or fishing effort restrictions. The restriction will remain in effect until the end of the fishing year.

**(e) Disbursement of contributions from the Sustainable Fisheries Fund**

(1) NMFS shall make available to the Western Pacific Fishery Management Council monetary contributions, made to the Fund pursuant to a specified fishing agreement, in the following order of priority:

(i) Project(s) identified in an approved Marine Conservation Plan (16 U.S.C. 1824) of a U.S. participating territory that is a party to a valid specified fishing agreement, pursuant to § 665.819(c); and

(ii) In the case of two or more valid specified fishing agreements in a fishing year, the projects listed in an approved Marine Conservation Plan applicable to the territory with the earliest valid agreement will be funded first.

(2) At least seven calendar days prior to the disbursement of any funds, the Council shall provide in writing to NMFS a list identifying the order of priority of the projects in an approved Marine Conservation Plan that are to be funded. The Council may thereafter revise this list.

Public reporting burden for this collection of information is estimated to average six hours per response and two hours per appeal, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Michael D. Tosatto, Regional Administrator, National Marine Fisheries Service, NMFS Pacific Islands Region (PIR), NOAA Daniel K. Inouye Regional Center, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.