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## Title 50 –Wildlife and Fisheries

### Chapter VI –Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

#### Part 665 –Fisheries in the Western Pacific

##### Subpart A –General

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

**Source:** 75 FR 2205, Jan. 14, 2010, unless otherwise noted.

#### § 665.20 Western Pacific Community Development Program.

- (a) **General.** In accordance with the criteria and procedures specified in this section, the Regional Administrator may authorize the direct or incidental harvest of management unit species that would otherwise be prohibited by this part.
- (b) **Eligibility.** To be eligible to participate in the western Pacific community development program, a community must meet the following criteria:
  - (1) Be located in American Samoa, Guam, Hawaii, or the Northern Mariana Islands (collectively, the western Pacific);
  - (2) Consist of community residents descended from aboriginal people indigenous to the western Pacific who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the western Pacific;
  - (3) Consist of individuals who reside in their ancestral homeland;
  - (4) Have knowledge of customary practices relevant to fisheries of the western Pacific;
  - (5) Have a traditional dependence on fisheries of the western Pacific;
  - (6) Are currently experiencing economic or other constraints that have prevented full participation in the western Pacific fisheries and, in recent years, have not had harvesting, processing or marketing capability sufficient to support substantial participation in fisheries in the area; and
  - (7) Develop and submit a community development plan to the Council and the NMFS that meets the requirements in paragraph (c) of this section.
- (c) **Community development plan.** An eligible community seeking access to a fishery under the authority of the Council and NMFS must submit to the Council a community development plan that includes, but is not limited to, the following information:
  - (1) A statement of the purposes and goals of the plan.
  - (2) A description and justification for the specific fishing activity being proposed, including:
    - (i) Location of the proposed fishing activity.
    - (ii) Management unit species to be harvested, and any potential bycatch.
    - (iii) Gear type(s) to be used.
    - (iv) Frequency and duration of the proposed fishing activity.

- (3) A statement describing the degree of involvement by the indigenous community members, including the name, address, telephone and other contact information of each individual conducting the proposed fishing activity.
- (4) A description of how the community and or its members meet each of the eligibility criteria in paragraph (b) of this section.
- (5) If a vessel is to be used by the community to conduct fishing activities, for each vessel:
  - (i) Vessel name and official number (USCG documentation, state, territory, or other registration number).
  - (ii) Vessel length overall, displacement, and fish holding capacity.
  - (iii) Any valid federal fishing permit number(s).
  - (iv) Name, address, and telephone number of the vessel owner(s) and operator(s).
- (d) **Council review.** The Council will review each community development plan to ensure that it meets the intent of the Magnuson-Stevens Act and contains all required information. The Council may consider advice of its advisory panels in conducting this review. If the Council finds the community development plan is complete, it will transmit the plan to the Regional Administrator for review.
- (e) **Agency review and approval.**
  - (1) Upon receipt of a community development plan from the Council, the Regional Administrator will review the plan for consistency with paragraphs (b), (c), and (d) of this section, and other applicable laws. The Regional Administrator may request from the applicant additional information necessary to make the determinations pursuant to this section and other applicable laws before proceeding with the review pursuant to paragraph (e)(2) of this section.
  - (2) If the Regional Administrator determines that a plan contains the required information and is consistent with paragraphs (b), (c), and (d) of this section, and other applicable laws, NMFS will publish a notice in the FEDERAL REGISTER to solicit public comment on the proposed plan and any associated environmental review documents. The notice will include the following:
    - (i) A description of the fishing activity to be conducted.
    - (ii) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the target, incidental, and bycatch species.
    - (iii) A summary of any regulations that would otherwise prohibit the proposed fishing activity.
    - (iv) Biological and environmental information relevant to the plan, including appropriate statements of environmental impacts on target and non-target stocks, marine mammals, and threatened or endangered species.
  - (3) Within 90 days from the end of the comment period on the plan, the Regional Administrator will notify the applicant in writing of the decision to approve or disapprove the plan.
  - (4) If disapproved, the Regional Administrator will provide the reasons for the plan's disapproval and provide the community with the opportunity to modify the plan and resubmit it for review. Reasons for disapproval may include, but are not limited to, the following:
    - (i) The applicant failed to disclose material information or made false statements related to the plan.

- (ii) The harvest would contribute to overfishing or would hinder the recovery of an overfished stock, according to the best scientific information available.
  - (iii) The activity would be inconsistent with an applicable law.
  - (iv) The activity would create a significant enforcement, monitoring, or administrative problem, as determined by the Regional Administrator.
- (5) If approved, the Regional Administrator will publish a notice of the authorization in the FEDERAL REGISTER, and may attach limiting terms and conditions to the authorization including, but not limited to, the following:
- (i) The maximum amount of each management unit species and potential bycatch species that may be harvested and landed during the term of the authorization.
  - (ii) The number, sizes, names, identification numbers, and federal permit numbers of the vessels authorized to conduct fishing activities.
  - (iii) Type, size, and amount of gear used by each vessel, including trip limits.
  - (iv) The times and places where fishing may or may not be conducted.
  - (v) Notification, observer, vessel monitoring, and reporting requirements.
- (f) **Duration.** Unless otherwise specified, and unless revoked, suspended, or modified, a plan may be effective for no longer than five years.
- (g) **Transfer.** Plans authorized under this section are not transferable or assignable.
- (h) **Sanctions.** The Regional Administrator may revoke, suspend or modify a community development plan in the case of failure to comply with the terms and conditions of the plan, any other applicable provision of this part, the Magnuson-Stevens Act, or other applicable laws.
- (i) **Program review.** NMFS and the Council will periodically review and assess each plan. If fishery, environmental, or other conditions have changed such that the plan's goals or requirements are not being met, or the fishery has become in an overfished state or overfishing is occurring, the Regional Administrator may revoke, suspend, or modify the plan.

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