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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 C –Hawaii Fisheries

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

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

#### § 665.224 Permits and fees.

- (a) **Applicability.** Unless otherwise specified in this subpart, § 665.13 applies to Hawaii coral reef ecosystem permits.
- (1) **Special permit.** Any person of the United States fishing for, taking or retaining Hawaii coral reef ECS must have a special permit if they, or a vessel which they operate, is used to fish for any:
- (i) Hawaii coral reef ECS in low-use MPAs as defined in § 665.199;
  - (ii) Hawaii coral reef ECS in the coral reef ecosystem management area; or
  - (iii) Hawaii coral reef ECS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.
- (2) **Transshipment permit.** A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Hawaii coral reef ecosystem management area to land or transship Hawaii coral reef ECS harvested within low-use MPAs.
- (3) **Exceptions.** The following persons are not required to have a permit under this section:
- (i) Any person issued a permit to fish under any FEP who incidentally catches Hawaii coral reef ECS while fishing for bottomfish MUS or ECS, crustacean MUS, western Pacific pelagic MUS, precious corals, or seamount groundfish;
  - (ii) Any person fishing for Hawaii coral reef ECS outside of an MPA, who does not retain any Hawaii coral reef ECS; and
  - (iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.
- (b) **Validity.** Each permit will be valid for fishing only in the fishery management area specified on the permit.
- (c) **General requirements.** General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.
- (d) **Special permit.** The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.
- (1) **Application.** An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to a statement describing the objectives of the fishing activity for which a special permit is

needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.*, stored live, fresh, frozen, preserved, sold for food, ornamental, research, or other use, and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) ***Incomplete applications.*** The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(3) ***Issuance.***

(i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the USCG, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

- (A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.
  - (B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to, issues related to spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).
  - (C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.
  - (D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.
  - (E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.
  - (F) The activity proposed under the special permit would create a significant enforcement problem.
- (vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:
- (A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.
  - (B) The times and places where fishing may be conducted.
  - (C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.
  - (D) Data reporting requirements.
  - (E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.
- (4) *Appeals of permit actions.*
- (i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.
  - (ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based on information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other

considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

- (iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such a hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.
- (iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.
- (5) Any time limit prescribed in this section may be extended for good cause, for a period not to exceed 30 days, by the Regional Administrator, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

*[75 FR 2205, Jan. 14, 2010, as amended at 84 FR 2772, Feb. 8, 2019]*