



Proposed Process for receiving a Native Hawaiian Subsistence Fishing Practices Permit

Version: March 3, 2022

The Western Pacific Regional Fishery Management Council (Council) has recommended the establishment of permitting Native Hawaiian subsistence fishing practices (NHSFPP) in the Monument Expansion Area of the Northwestern Hawaiian Islands. The following framework provides a draft of the process for applying for, and receiving, a NHSFPP.

For applicants:

1. An eligible applicant for the Native Hawaiian Subsistence Fishing Practices Permit (NHSFPP) must submit an application that includes, but is not limited to, the following information:
 - a. Description of Native Hawaiian fishing practice that will be conducted in the MEA
 - b. Port of Embarkation and Port of Return
 - c. Approximate dates
 - d. Potential disposition of fish
 - e. If selling for cost recovery, include the following
 - i. Estimate of real fishing costs associated with trip (fuel, food, ice, bait)
 - ii. Potential sales locations
 - iii. Estimate of species, pounds, value
2. Application will be reviewed by NMFS through the process below and a decision will be provided to the applicant.

Application Review:

1. If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, Office of Hawaiian Affairs, US Fish and Wildlife Service, Office of National Marine Sanctuaries, State of Hawaii, and other interested parties who have identified themselves to the Council and NMFS.
2. Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, OHA, USFWS, Office of National Marine Sanctuaries, and the Director of the State of Hawaii 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 Native Hawaiian Subsistence Fishing Practices 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;
 - e. Other biological and ecological information relevant to the proposal;
 - f. The type, gear, or method of fishing that constitutes Native Hawaiian subsistence fishing practices;
 - g. The estimated costs for fishing (limited to fuel, ice, food, and bait) that may be requested to be recovered through barter, sale, or trade. The applicant will be provided with an opportunity to appear in support of the application.
3. Following a review of the recommendations and supporting rationale, the Regional Administrator may:
 - a. Concur with the recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the National Standards, the ESA and other applicable laws, approve or deny a NHSFPP; or
 - b. Reject the recommendations, in which case, written reasons will be provided by the Regional Administrator to the reviewers for the rejection.
 4. If the Regional Administrator does not receive a recommendation from the reviewers within 60 days of the reviewer's receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

APPENDIX A-Current Fisheries Permit Review Processes in the Western Pacific Region

General Federal Fishing Permits

50 CFR 665.13

(e) **Issuance.** After receiving a complete application submitted under [paragraph \(c\)](#) of this section, the Regional Administrator will issue a permit to an applicant who is eligible under this part, as appropriate.

Used for the following federal permits:

- Hawaii longline limited access permit.
- Mau Zone limited access permit.
- Coral reef ecosystem special permit.
- American Samoa longline limited access permit.
- MHI non-commercial bottomfish permit.
- Western Pacific squid jig permit.
- Crustacean permit.
- CNMI commercial bottomfish permit.
- Marianas Trench Monument non-commercial permit.
- Marianas Trench Monument recreational charter permit.
- Pacific Remote Islands Monument recreational charter permit.
- Rose Atoll Monument non-commercial permit.
- Rose Atoll Monument recreational charter permit.

Also included:

50 CFR 665.14

(d) **Sales report.** The operator of any fishing vessel subject to the requirements of [§ 665.142](#), [§ 665.242](#), [§ 665.442](#), or [§ 665.642](#), or the owner of a medium or large fishing vessel subject to the requirements of [§ 665.404\(a\)\(2\)](#) must submit to the Regional Administrator, within 72 hours of offloading of crustacean MUS or ECS, an accurate and complete sales report on a form provided by the Regional Administrator. The form must be signed and dated by the fishing vessel operator.

Special Coral Reef Ecosystem Permit

50 CFR § 665.224 Permits and fees

(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.

Community Development Plan

50 CFR 665.20

(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.

Experimental Fishing Permits

50 CFR 665.17

(a) **General.** The Regional Administrator may authorize, for limited purposes, the direct or incidental harvest of MUS or ECS that would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Administrator in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) **Observers.** No experimental fishing for crustacean MUS or ECS may be conducted unless a NMFS observer is aboard the vessel.

(c) **Application.** An applicant for an EFP must submit to the Regional Administrator at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

- (1) The date of the application.
- (2) The applicant's name, mailing address, and telephone number.
- (3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.
- (4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.
- (5) For each vessel to be covered by the EFP:
 - (i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) ***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.

(e) ***Issuance.***

(1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the Federal Register with a brief description of the proposal and will give interested persons an opportunity to comment. The Regional Administrator will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected state, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Administrator will consult with the Council and the Director of the affected state fishery management agency concerning the permit application. The applicant will be

notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in [paragraph \(e\)\(2\)](#) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

- (i) 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.
- (ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.
- (iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.
- (iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FEP.
- (v) The applicant has failed to demonstrate a valid justification for the permit.
- (vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the Federal Register describing the experimental fishing to be conducted under the EFP. The Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

- (i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.
- (ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.
- (iii) The times and places where experimental fishing may be conducted.
- (iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.
- (v) The condition that observers be carried aboard vessels operating under an EFP.
- (vi) Data reporting requirements.
- (vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FEP.

PMNM Permitting Process

The Monument issues permits in six categories:

1. Research
2. Education
3. Conservation and Management
4. Native Hawaiian Practices
5. Special Ocean Use
6. Recreation (limited to Midway Atoll Special Management Area)

Papahānaumokuākea Marine National Monument
Monument Permit Application Unified Public Notification Policy

Background

A permit is required for most activities allowed in the Papahānaumokuākea Marine National Monument (Monument), including Hawaiian Islands National Wildlife Refuge, the Midway Atoll National Wildlife Refuge, Battle of Midway National Memorial, Northwestern Hawaiian Islands State Marine Refuge, Kure Atoll Hawaii State Seabird Sanctuary, and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Permit applications are accepted:

- February 1: For activities occurring between June 1 and Aug 31
- May 1: For activities occurring between September 1 and December 31
- September 1: For activities occurring between January 1 and May 31

Permit applications received after the deadline dates are not guaranteed to be processed before the associated activity period commences.

The following unified public notification policy will engage and inform the public of activities proposed to occur within the Monument. Posting of a permit application does not equate to permit approval. After posting, each application is thoroughly reviewed. Final permitted activities may differ from the proposed activities.

Policy

- Within 10 calendar days of receipt of application, a summary of the applicant's proposed activities will be posted on an agency web site for public viewing.
- Within 40 calendar days of receipt of application, full permit applications will be posted on an agency website for public viewing. A full application is one from which reviewers are able to evaluate the merits of the proposed activity.
- The permit application will be posted for a minimum of 30 calendar days prior to agency determination.
- Proposed activities that respond to urgencies, meet a high management priority, and are exigent in either opportunity or need for execution shall be considered separately. Examples of such occasions from the 2007 field

season include providing twin monk seal captive care, as well as an unanticipated opportunity to gather critical mapping data.

It is noted that there are additional opportunities for public notification and input:

- Monument Regulations (50 CFR Part 404.11) require Monument permit applications for Special Ocean Use be posted for public notice and comment 30 days prior to the issuance of a Monument permit.
- Appropriate regulatory and environmental reviews (e.g. Environmental Impact Statements, Environmental Assessments, and Compatibility Determinations) related to Monument permit applications are posted for public comment.
- Monument permit applications that include proposed activities within the Northwestern Hawaiian Islands State Marine Refuge are posted to the Board of Land and Natural Resources (BLNR) website for seven days prior to the scheduled BLNR meeting as part of the overall Land Board submittal.

This policy provides guidance to the Co-Trustee representatives for public notification of permit applications for proposed activities in the Monument.

It is also important to note that the permit application that is posted may not include some of the detailed logistical and compliance information being considered prior to permit issuance. An activity may be provisionally approved based on the posted full application, but a permit will only be issued after the receipt of all required information (e.g. final crew/team roster, hull inspection certification, etc.).