

offer a completed Buy America certificate in accordance with §§ 661.6 or 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate, submission of certificates of both compliance and non-compliance, or failure to submit any certification), may submit to the FTA Chief Counsel within ten (10) days of bid opening or submission of a final offer, a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification in accordance with 28 U.S.C. 1746, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will also submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(i) The FTA Chief Counsel may request additional information from the bidder or offeror, if necessary. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in § 661.15(m).

(ii) [Reserved]

(2) In the case of a negotiated procurement, a certification submitted as part of an initial proposal may be superseded by a subsequent certification(s) submitted with a revised proposal or offer. Compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal will control.

(c) Whether or not a bidder or offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification (in the case of a sealed bidding procurement) or its certification submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of a final offer. Where a bidder or offeror certifies that it will comply with the applicable Buy America requirements, the bidder, offeror, or grantee is not eligible for a waiver of those requirements, except as provided in section 661.7(c)(3) in the case of a post-award non-availability waiver.

8. In § 661.15, revise paragraphs (a), (b), (d), and (g) to read as follows:

**§ 661.15 Investigation procedures.**

(a) It is presumed that a bidder or offeror who has submitted the required Buy America certificate is complying with the Buy America provision. A false certification is a criminal act in violation of 18 U.S.C. 1001.

(b) Any party may petition FTA to investigate the compliance of a successful bidder or offeror with the bidder's or offeror's certification. That party ("the petitioner") must include in the petition a statement of the grounds of the petition and any supporting documentation. If FTA determines that the information presented in the petition indicates that the presumption in paragraph (a) of this section has been overcome, FTA will initiate an investigation.

\* \* \* \* \*

(d) When FTA determines under paragraph (b) or (c) of this section to conduct an investigation, it requests that the grantee require the successful bidder or offeror to document its compliance with its Buy America certificate. The successful bidder or offeror has the burden of proof to establish that it is in compliance. Documentation of compliance is based on the specific circumstances of each investigation, and FTA will specify the documentation required in each case.

\* \* \* \* \*

(g) The grantee's reply (or that of the bidder or offeror) will be transmitted to the petitioner. The petitioner may submit comments on the reply to FTA within 10 working days after receipt of the reply. The grantee and the low bidder or offeror will be furnished with a copy of the petitioner's comments, and their comments must be received by FTA within 5 working days after receipt of the petitioner's comments.

\* \* \* \* \*

9. Revise § 661.17 to read as follows:

**§ 661.17 Failure to comply with certification.**

If a successful bidder or offeror fails to demonstrate that it is in compliance with its certification, it will be required to take the necessary steps in order to achieve compliance. If a bidder or offeror takes these necessary steps, it will not be allowed to change its original bid price or the price of its final offer. If a bidder or offeror does not take the necessary steps, it will not be awarded the contract if the contract has not yet been awarded, and it is in breach of contract if a contract has been awarded.

10. Revise § 661.19 to read as follows:

**§ 661.19 Sanctions.**

A willful refusal to comply with a certification by a successful bidder or offeror may lead to the initiation of debarment or suspension proceedings under part 29 of this title.

11. Revise § 661.20 to read as follows:

**§ 661.20 Rights of parties.**

(a) A party adversely affected by an FTA action under this subsection shall have the right to seek review under the Administrative Procedure Act (APA), 5 U.S.C. section 702 *et seq.*

(b) Except as provided in paragraph (a) of this section, the sole right of any third party under the Buy America provision is to petition FTA under the provisions of § 661.15 of this part. No third party has any additional right, at law or equity, for any remedy including, but not limited to, injunctions, damages, or cancellation of the Federal grant or contracts of the grantee.

Issued in Washington, DC this 18th day of November, 2005.

**David B. Horner,**

*Acting Deputy Administrator.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[I.D. 111505C]

**Fisheries off West Coast States and in the Western Pacific; Bottomfish Fisheries; Overfishing Determination on Bottomfish Multi-Species Stock Complex; Hawaiian Archipelago**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement; notice of scoping meetings; request for comment.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and regulations published by the Council on Environmental Quality (40 CFR part 1505), NMFS, in coordination with the Western Pacific Fishery Management Council (Council), is preparing a Supplemental Environmental Impact Statement (SEIS). The SEIS will supplement the Final Environmental Impact Statement (FEIS) Bottomfish and Seamount Groundfish Fishery of the

Western Pacific Region. The SEIS will analyze a range of alternatives to end overfishing in the bottomfish species complex in the Hawaiian Archipelago.

**DATES:** Public scoping meetings will be held: January 9, 2006, in Hilo, HI; January 10, 2006 in Kona, HI; January 11, 2006, in Kahului, HI; January 12, 2006 in Honolulu, HI; and January 13, 2006 in Lihue, HI. See **SUPPLEMENTARY INFORMATION** for specific times and locations of hearings. Comments on the issues, range of alternatives, and impacts that should be analyzed in the SEIS must be received by January 16, 2006.

**ADDRESSES:** Submit written comment or requests to be added to the mailing list for this SEIS to William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814; or to Kitty Simonds, Executive Director, Council, 1164 Bishop St. Suite 1400, Honolulu, HI 96813. Comments or requests may also be sent via facsimile (fax) to the Pacific Islands Regional Office at (808) 973-2941 or to the Council at (808) 522-8228. You may also submit comments via email at [PirBottomfishNOI@noaa.gov](mailto:PirBottomfishNOI@noaa.gov) or through the Federal eRulemaking Portal at <http://www.regulations.gov>. The Council's scoping document on the overfishing determination for the bottomfish species complex in the Hawaiian Archipelago may also be obtained from the Council's office at the address above or via the Internet at <http://www.wpcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson, Regional Administrator, NMFS, (808) 973-2937 or Kitty Simonds, Executive Director, Council, (808) 522-8220.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce to report annually on the status of fisheries within each regional fishery management council's geographical area of authority (16 U.S.C. 1854(e)(1)). According to the guidelines for National Standard 1 of the Magnuson-Stevens Act (50 CFR 600.310), fishery stock status is assessed with respect to two status determination criteria, one of which is used to determine whether a stock is overfished and the second of which is used to determine whether the stock is subject to overfishing. A stock is subject to overfishing if the fishing mortality rate exceeds the maximum fishing mortality threshold (MFMT) for one year. The MFMT for particular

stocks are specified in fishery management plans.

According to Amendment 6 Supplement to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), effective July 3, 2003 (68 FR 46112, August 5, 2003), the MFMT for bottomfish stock complexes managed under the Bottomfish FMP would be exceeded if the fishing mortality rate exceeded the rate associated with maximum sustainable yield (MSY). The most recent assessment of the bottomfish species complex presented in Appendix 5 of the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region 2003 Annual Report indicated that, based on data through 2002, fishing effort (proxy for fishing mortality) exceeded the rate associated with MSY.

Appendix 5 in the 2003 Annual Report indicates that the main Hawaiian islands (MHI) is where the excessive fishing mortality problem occurs. The Northwestern Hawaiian Islands (NWHI) bottomfish fishery is managed under an Bottomfish FMP-authorized limited entry program, separated into two limited entry zones (Hoomalu and Mau). In 2004, nine vessels participated in the NWHI bottomfish fishery. In contrast, the MHI is an open access fishery regulated by the State of Hawaii with over 3,700 vessels registered with the State of Hawaii to fish for bottomfish. Therefore, it is likely that reducing fishing mortality in the MHI would be the most effective means to end overfishing in the Hawaiian Archipelago.

On May 27, 2005, the Pacific Islands Regional Administrator, NMFS, notified the Council that NMFS had determined that the bottomfish species complex around the Hawaiian Archipelago to be in a state of overfishing (70 FR 34552, June 14, 2005). Section 304 (e) (3) of the Magnuson-Stevens Act states that "[w]ithin one year of an identification [of overfishing] . . . the appropriate Council . . . shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery . . . to end overfishing in the fishery . . ."

As required by the Magnuson-Stevens Act, the Council is required to prepare and submit to NMFS a fishery management plan amendment to end overfishing of the bottomfish complex around the Hawaiian Archipelago.

Significant issues to be analyzed in the SEIS will include, but will not necessarily be limited to, effects on targeted species, bycatch, federally listed threatened and endangered

species, Hawaii state fishery management policies, fishing for bottomfish in State waters, incidental catch of bottomfish species in other fisheries, and essential fish habitat. Other issues will be health and safety, water quality, environmental justice, cultural and socio-economic, and any other issues identified through scoping and public involvement.

Alternatives that may be considered in detail in the SEIS are likely to include, but will not necessarily be limited to:

*Alternative 1: No Action:* In 1998 the State of Hawaii created bottomfish closed areas to reduce effort in the MHI. The closure applied to seven deep water bottomfish species (onaga, ehu, gindai, kalekale, hapuupuu, opakapaka, and lehi) commonly targeted using deep handline gear. Since 1998 a consistent downward trend in effort has occurred in the bottomfish fishery in the MHI. This alternative continues to support those closed areas which extend into Federal waters.

*Alternative 2:* Alternative 2 would overlay Federal closures on the State of Hawaii's Restricted Fishing Areas in Federal waters. This action would provide for Federal enforcement of the closures in addition to current State of Hawaii's enforcement.

*Alternative 3:* This alternative would close the Federal waters around Penguin and Middle Banks to bottomfishing. This alternative would prohibit the targeting of, the landing of, and the sale of the seven deep slope bottomfish species identified in Alternative 1 from Penguin and Middle Banks. The closure would apply to all recreational and commercial vessels.

*Alternative 4:* Alternative 4 would create a MHI bottomfish fishery seasonal closure. This alternative would prohibit the targeting of, the landing of, and the sale of the seven deep slope bottomfish species identified in Alternative 1 from the MHI. Closure would apply to all recreational and commercial vessels. Under this alternative, the federally permitted NWHI bottomfish fishery will remain open during MHI closures.

*Alternative 5:* This alternative would establish total allowable catch for all commercial fishing boats in the MHI.

*Alternative 6:* This alternative would establish individual fishing quotas for all commercial fishing boats in the MHI. Recreational vessels would continue to be subject to the catch limits established by the State of Hawaii.

*Alternative 7:* This alternative combines the use of seasonal closures (Alternative 4) and individual fishing quotas (Alternative 6) for commercial vessels during the seasonal closure.

*Alternative 8:* This alternative combines use of seasonal closures (Alternative 4) and a partial closure of Penguin Banks (Alternative 3).

The public is invited to assist in developing the scope of alternatives to be analyzed, and to provide other relevant information on the subject of ending overfishing of this complex.

#### Dates, Times, and Locations for Public Scoping Meetings

1. Hilo, HI – Monday, January 9, 2006, from 6–9 p.m. at the University of Hawaii-Hilo Campus Center, 200 W. Kawili St., Hilo, Hawaii 96720;

2. Kona, HI – Tuesday, January 10, 2006, from 6–9 p.m. at the King Kamehameha Hotel, 75–5660 Palani Rd., Kona, HI 96740;

3. Maui, HI – Wednesday, January 11, 2006, from 6–9 p.m. at the Maui Beach Hotel, 170 Kaahumanu Ave., Kahului, HI 96732;

4. Oahu, HI – Thursday, January 12, 2006, from 6–9 p.m. at the Ala Moana Hotel, 410 Atkinson Dr., Honolulu, HI 96815;

5. Kauai, HI – Friday, January 13, 2006, from 6–9 p.m. at Chiefess Kamakahahei Middle School, 4431 Nuhou St., Lihue, HI 96766.

To receive a copy of the Draft SEIS, please provide your name and address in writing to the point of contact identified in this notice. An electronic version of the Draft SEIS, when completed, will also be available by internet at the following sites: <http://swr.nmfs.noaa.gov/pir> or at [www.wpcouncil.org](http://www.wpcouncil.org).

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least five days prior to the meeting date.

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

Dated: November 21, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 05–23363 Filed 11–25–05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[I.D. 112205A]

#### Western Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting and public hearings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold its 130<sup>th</sup> meeting to consider and take action on fishery ecosystem plans for the Western Pacific Region. The Council will also hold public hearings throughout Hawaii the week prior to its 130<sup>th</sup> meeting, as well as during the 130<sup>th</sup> meeting.

**DATES:** The 130<sup>th</sup> Council meeting and the public hearings will be held December 20, 2005, and December 12–15, 2005, respectively. For specific dates, times and locations of the public hearings, and the agenda for the 130<sup>th</sup> Council meeting, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The 130<sup>th</sup> Council meeting will be held at the Council's office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. The 130<sup>th</sup> Council meeting telephone conference call-in-number is: (866)867–8289, passcode 1683776. For Guam and International Participants, the call-in-number is: (813)376–1442, passcode 1683776.

The public hearings will be held in Hilo, HI; Kailua-Kona, HI; Lihue, HI; Kahului, HI; and Honolulu, HI. For specific dates, times and locations, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808)522–8220; FAX: (808)522–8226.

#### SUPPLEMENTARY INFORMATION:

##### Background Information

The Western Pacific Fishery Management Council has recently initiated a shift towards ecosystem approaches to fisheries management by drafting place-based fishery ecosystem plans (FEPs) to amend and reorganize the existing species-based fishery management plans (FMPs). The draft FEPs include the: (a) American Samoa Archipelago FEP, (b) Hawaii Archipelago FEP, (c) Mariana Archipelago FEP, (d) Pacific Pelagic

FEP, and e) Pacific Remote Island Areas FEP.

Recognizing that implementation of a successful ecosystem approach to fisheries management will require incremental steps as well as broad public and governmental agency collaboration, these FEPs lay the institutional framework on which further fisheries ecosystem management measures will be built. Pending final action by the Council and the approval of the FEPs by the Secretary of Commerce, the current FMP regulations will be reorganized and consolidated into place-based regulations specific to each FEP area however, no substantive changes to current regulations will occur at this reorganization stage.

In October and November 2005, public hearings on the draft FEPs were conducted throughout the Western Pacific Region in the following areas: Tutuila, AS; Saipan, CNMI; Tinian, CNMI; Rota, CNMI; Honolulu, HI; and Tumon Bay, GU. At the 129<sup>th</sup> Council meeting held November 8–11, 2005, in Tumon Bay, Guam, the Council recommended to tentatively adopt the draft FEPs and to consider final approval at the next Council meeting.

#### 130th Council Meeting Agenda

*Tuesday December 20, 2005, 12 noon Hawaii Standard Time*

1. Introductions
2. Approval of Agenda
3. Western Pacific Fishery Ecosystem Plans
  - A. Final Action on FEP Objectives
  - B. Final Action on FEP Boundaries
  - C. Final Action FEP Management Unit Species designations
  - D. Final Action on Structure of Council Advisory Bodies
  - E. Final Action on Regional and International Coordination and Community Participation
4. Public Hearing
5. Council Discussion and Action
6. Update on Hawaii Bottomfish Overfishing
7. Other Business

#### Dates, Times, and Locations of Public Hearings

(1) Hilo, HI – Monday, December 12, 2005, from 6–9 p.m. at the University of Hawaii-Hilo Campus Center, 200 W. Kawili St., Hilo, HI 96720;

(2) Kailua-Kona, HI – Tuesday, December 13, 2005, from 6–9 p.m. at the King Kamehameha Hotel, 75–5660 Palani Rd., Kona, HI 96740;

(3) Kauai, HI – Wednesday, December 14, 2005, from 6–9 p.m. at Chiefess Kamakahahei Middle School, 4431 Nuhou St., Lihue, HI 96766.