

and LPTV stations are required to transmit only the test script.

(2) Required Weekly Tests:

(i) EAS Header Codes and EOM Codes:

(A) Effective January 1, 1997, AM, FM and TV stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times.

(B) Effective December 31, 1998, cable systems with 10,000 or more subscribers per headend must conduct tests of the EAS header and EOM codes at least once a week at random days and times on all programmed channels:

(C) Effective October 1, 2002, cable systems serving fewer than 5,000 subscribers per headend must conduct tests of the EAS header and EOM codes at least once a week at random days and times on at least one programmed channel.

(D) Effective October 1, 2002, the following cable systems and wireless cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times on all programmed channels:

(1) Cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and,

(2) Wireless cable systems with 5,000 or more subscribers.

(E) Effective October 1, 2002, the following cable systems and wireless cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times on at least one programmed channel:

(1) Cable systems with fewer than 5,000 subscribers per headend; and,

(2) Wireless cable systems with fewer than 5,000 subscribers.

(ii) Class D non-commercial educational FM and LPTV stations are not required to transmit this test but must log receipt.

(iii) The EAS weekly test is not required during the week that a monthly test is conducted.

(iv) TV stations, cable television systems and wireless cable systems are not required to transmit a video message when transmitting the required weekly test.

(3) Periodic National Tests. National Primary (NP) sources shall participate in tests as appropriate. The FCC may request a report of these tests.

(4) EAS activations and special tests. The EAS may be activated for emergencies or special tests at the State or Local Area level by a broadcast station, cable system or wireless cable system instead of the monthly or weekly tests required by this section. To substitute for a monthly test, activation must include transmission of the EAS header codes, Attention Signal,

emergency message and EOM code and comply with the visual message requirements in § 11.51. To substitute for the weekly test of the EAS header codes and EOM codes in paragraph (2)(i) of this section, activation must include transmission of the EAS header and EOM codes. Television stations and cable systems and wireless cable systems shall comply with the aural and visual message requirements in § 11.51. Special EAS tests at the State and Local Area levels may be conducted on daily basis following procedures in State and Local Area EAS plans.

(b) Entries shall be made in broadcast station and cable system and wireless cable system records as specified in § 11.54(b)(12).

**§ 11.62 [Removed]**

16. Remove § 11.62.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 010712174-2072-02; I.D. 062701D]

**Eligibility Criteria and Application Process for the Western Pacific Community Development Program and Western Pacific Demonstration Projects**

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

**ACTION:** Final rule; solicitation for demonstration project proposals.

**SUMMARY:** NMFS issues this final rule to publish definitions, developed with the Council, for certain terms appearing in the criteria used to determine which western Pacific communities may participate in western Pacific community development programs and western Pacific demonstration projects (Projects). NMFS also publishes criteria developed by the Council to determine which western Pacific communities will be eligible to participate in western Pacific community development programs and Projects under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Finally, NMFS and the Council solicit pre-application proposals for Projects from communities in the western Pacific region to foster and promote the involvement of such

communities in Projects related to western Pacific fisheries.

**DATES:** This final rule is effective May 16, 2002. Proposals for Projects must be received by 5 p.m. Hawaii Standard Time on June 17, 2002.

**ADDRESSES:** Proposals should be sent to: Western Pacific Demonstration Projects, Pacific Islands Area Office, National Marine Fisheries Service, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814. Proposals should include a cover letter signed by a responsible party representing the respective western Pacific community.

**FOR FURTHER INFORMATION CONTACT:** Kelvin Char (NMFS), phone 808-973-2937, e-mail [Kelvin.Char@noaa.gov](mailto:Kelvin.Char@noaa.gov); or Charles Ka'ai'ai (Council), 808-522-8220 or by e-mail at [Charles.Kaaiiai@noaa.gov](mailto:Charles.Kaaiiai@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This **Federal Register** document is available through the NMFS Pacific Island Area Office (PIAO) Home Page at: <http://swr.nmfs.noaa.gov/piao/index.htm>, the Council's Home Page at: <http://www.wpcouncil.org>, and the Grants information page at: <http://www.rdc.noaa.gov/grants>.

**I. Background**

This final rule publishes eligibility criteria that will be used for both Community Development Programs and submission of Project proposals. This document solicits Project proposals only. The solicitation of Community Development Plans will be a separate announcement in accordance with a program to be developed by the Council.

Under the authority of section 305(i)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(i)(2), the Council and the Secretary of Commerce (Secretary) may establish western Pacific community development programs for any fishery under the authority of the Council to provide access to such fishery for western Pacific communities. Section 305(i)(2)(B) specifies that to be eligible to participate in western Pacific community development programs, a community must:

1. Be located within the Western Pacific Regional Fishery Management Area;

2. Meet criteria developed by the Council, approved by the Secretary and published in the **Federal Register**;

3. Consist of community residents who are descended from the aboriginal people indigenous to the area who conducted commercial or subsistence fishing using traditional fishing

practices in the waters of the Western Pacific region;

4. Not have previously developed harvesting or processing capability sufficient to support substantial participation in fisheries in the Western Pacific Regional Fishery Management Area; and

5. Develop and submit a Community Development Plan to the Council and the Secretary. For purposes of eligibility to receive a Project grant, only, a Project proposal submitted under section 305 note of the Magnuson-Stevens Act (Section 111(b) of the Sustainable Fisheries Act, Pub. L. 104-297) will be deemed to be a Community Development Plan.

Section 305(i)(2)(D) of the Magnuson-Stevens Act defines the "Western Pacific Regional Fishery Management Area" as the area under the jurisdiction of the Council or an island within such area.

Under section 305 note of the Magnuson-Stevens Act (Section 111(b) of the Sustainable Fisheries Act, Pub. L. 104-297) western Pacific communities eligible to participate in western Pacific community development programs are eligible to apply for and receive grants for related Projects. Such communities must submit a proposal to NMFS for Projects that foster and promote the use of traditional indigenous fishing practices of western Pacific communities found on American Samoa, Guam, Hawaii or the Northern Mariana Islands. A Project may identify and apply traditional indigenous fishing practices; develop or enhance western Pacific community-based fishing opportunities; and involve research, community education, or the acquisition of materials and equipment necessary to carry out any such Project.

The Council developed criteria, which were approved by NMFS, to determine which communities are eligible to participate in western Pacific community development programs. NMFS and the Council also developed definitions for certain terms used in the criteria for community development programs and Projects. Both the criteria and definitions were published for comment in a proposed rule at 66 FR 39131 (July 27, 2001).

A proposal for a Project must be submitted by a responsible party representing non-transient people descended from the aboriginal people indigenous to the area. A responsible party must be an organization of indigenous peoples or organization representing indigenous peoples including but not limited to Institutions of Higher Education, non-profit organizations, commercial

organizations, state, local or indigenous community governments. The responsible party must reside in the Western Pacific Regional Fishery Management Area. The request must address the requirements of section 305 (i)(2)(B) outlined in section I. Background.

## II. Comments and Responses

NMFS received one letter containing five comments on the proposed rule for the western Pacific community development program and Projects eligibility criteria and definitions (66 FR 39131, July 27, 2001).

*Comment 1:* The traditional indigenous fishing practices of ancient Hawaiian people utilized both paddle and sail canoes, navigation by stars, woven fishing lines and hooks made out of marine mammal bones. Based on the qualification criteria "To be eligible for funding, a Project must foster and promote the use of traditional indigenous fishing practices of western Pacific communities found on American Samoa, Guam, Hawaii or the Northern Mariana Islands" please clarify if the use of modern marine boats, fishing equipment and electronic technology would qualify under the eligibility criteria.

*Response:* Yes, modern equipment such as motors, manufactured boats, steel hooks or compasses can be used as long as they foster and promote traditional indigenous fishing practices.

*Comment 2:* The traditional indigenous fishing practices of ancient Hawaiian people did not utilize ice to prolong the shelf life of hooked fish. Would the construction of a modern ice manufacturing plant to provide ice to indigenous fishermen qualify under the eligibility criteria?

*Response:* Yes, construction of facilities that enhance traditional indigenous fishing practices would qualify, provided the proposed facility, its siting, and its construction meet all the requirements and conditions set out by other Federal or state laws and regulations.

*Comment 3:* Did the aboriginal indigenous people conduct "commercial fishing" as defined in today's society?

*Response:* We cannot answer this question, which is why the criterion states "commercial or subsistence". Historically communities that fished were probably either doing so for commercial purposes or subsistence, therefore, this criterion will probably not exclude any traditional fishing communities.

*Comment 4:* Would a modern fishing business owned by indigenous

aboriginal people qualify to participate in the Community Development Program?

*Response:* A modern fishing business owned by people descended from the aboriginal people indigenous to the area and employing traditional fishing methods would be eligible to participate in a Community Development Program provided it meets all of the eligibility criteria.

*Comment 5:* Does the definition of "community" (Community—Means a population of non-transient people descended from the aboriginal people indigenous to the area who share a common history based on social, cultural and economic interactions and a functional relationship sustained by participation in fishing and fishing related activities) mean that all facets of accomplishing the traditional fishing must be conducted solely by indigenous aboriginal people? For example, can non-aboriginal people be used to provide services necessary to maintain the aboriginal fishing?

*Response:* A community may consist of people from different ancestries, however, the responsible party for a Community Development Program or grant recipient for a Project must represent non-transient people descended from the aboriginal people indigenous to the area. Anyone can provide services to maintain a Project.

## III. Definitions and Eligibility Criteria

### A. Definitions

The following definitions developed by NMFS and the Council will apply to terms used in the eligibility criteria recommended by the Council and to the terms used in requirements found at section 305(i)(2)(B) of the Magnuson-Stevens Act.

*Community* means a population of non-transient people descended from the aboriginal people indigenous to the area who share a common history based on social, cultural and economic interactions and a functional relationship sustained by participation in fishing and fishing related activities.

*Economic barriers* means barriers which add to the difficulty and cost of participation in a fishery by descendants of the aboriginal people of each area. They include, but are not limited to, the degradation of marine habitat, localized depletion of harvested stocks, and loss of access to long-fished grounds because of closure and/or lack of access to capital and expertise to compete for marine resources.

*Subsistence fishing* means harvesting of marine resources for personal, family or community use or for gifts of food to

extended family members and friends that perpetuate community relationships and identities.

*Traditional fishing practices and traditional indigenous fishing practices* means methods of fishing and fishery utilization developed from aboriginal customary and traditional uses and practices that can be conducted within existing regulations.

*The cultural and social framework relevant to the fishery*, means for each community, the accumulation and perpetuation of ancestral knowledge and participation that have resulted from historical dependence on marine resources as a principal source of food for the aboriginal people indigenous to the area.

#### B. Eligibility Criteria

The following criteria will be used for determining which communities may participate in Projects. They incorporate all of the eligibility criteria set forth in section 305(i)(2)(B) of the Magnuson-Stevens Act. Any community meeting these criteria is also eligible to participate in a western Pacific community development program and submit a Project proposal.

1. Be located in American Samoa, the Northern Mariana Islands, Guam or Hawaii (Western Pacific Area);
2. Consist of community residents descended from aboriginal people indigenous to the western Pacific area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the western Pacific;
3. Consist of community residents 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. Experience economic or other barriers 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 Western Pacific Council and the National Marine Fisheries Service.

### III. Western Pacific Demonstration Projects

#### Funding

NMFS is now soliciting proposals for Projects. However, NMFS cannot guarantee that sufficient funds will be available to make awards for all

proposals submitted for this program. The total U.S. dollar amount of grants awarded through this solicitation will not exceed \$500,000 for 3 to 5 Projects. Another solicitation may occur in calendar year 2002.

The Advisory Panel, through the Councils designee, will recommend to NMFS proposals to be considered for Federal funding. The authority for approving a grant award for Projects rests solely with NOAA, based upon its review and evaluation of a western Pacific community's Application for Federal Assistance, a review of the Advisory Panel's ranking and the Council designee's official submission.

The Advisory Panel, Council and NMFS will adhere to the principles of fair and open competition in the selection of proposals and the distribution of available funds under this authority.

#### Duration and Terms

Grants will be awarded for a maximum period of 2 years. The award period depends upon the duration of the funding requested in the application and the pre-award review of the application by NOAA and Department of Commerce officials. Normally, each Project budget period is 12 months in duration. If an application is approved for funding, the Secretary has no obligation to provide any additional funding in connection with that award in subsequent years. After an award is made by NOAA, any subsequent application to continue work on an existing Project must be submitted for consideration as a new proposal and will not receive preferential treatment in the Advisory Panel's selection process or by NOAA in its review of a new grant application. Renewal of an award to increase funding or to extend the period of performance is at NOAA's discretion.

### III. Catalogue of Federal Domestic Assistance

The Western Pacific Demonstration Projects are covered in the "Catalog of Federal Domestic Assistance" under number 11.452, Unallied Industries Projects.

#### IV. Project Proposal and Grants Application Information

The process for the selection and Federal funding for Projects is comprised of two steps:

(A) Responsible parties (organizations of indigenous peoples or organizations representing indigenous peoples including Institutions of higher education, non-profit organizations, commercial organizations, state, local or indigenous community governments)

desiring to participate in Projects should submit a proposal to NMFS PIAO (see **ADDRESSES**).

All pages must be double-spaced, in a minimum 12-point font size and printed on 8-1/2" x 11" paper. Proposals may not exceed 20 pages and all information needed for review of the proposal should be included in the main text; no appendices are permitted. NMFS will strictly enforce the 20-page limit.

Proposals shall include the following information in this order:

- A. Name of Responsible Party.
- B. Address.
- C. Telephone number.
- D. Fax number if available.
- E. E-mail address, if available.
- F. Introduction or Background section—explain the purpose and need for the Project.

G. Project Description—describe the Project, its goals and who will be managing the Project.

H. Methods section—provide a detailed description of all methods and equipment that will be used or tested.

I. Anticipated Benefits—describe the anticipated benefits and the relation to traditional indigenous fishing practices.

J. Proposed Budget—include relevant budget items and justification for each item. Proposals must contain cost estimates showing total Project costs. Cost-sharing is not required. However, if cost-sharing occurs it must be indicated as Federal and non-Federal shares, divided into cash and in-kind contributions. Direct costs, including the information regarding the rate of and total compensation received by Project personnel must be specified in categories to the extent practicable. This accounting also needs to itemize the costs and rate of compensation received for services that will be provided by people not descended from the aboriginal people indigenous to the area. Indirect costs are anticipated and should be identified. (If the applicant has not previously established an indirect cost rate with a Federal agency and their proposal is recommended for funding, the negotiation and approval of a rate will be subject to the procedures in the application cost principles and section B.5. of the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917).) Fees or profits are not allowable categories.

Any one individual may participate in more than one Project. However, the cumulative time by an individual in all Projects shall not exceed 100 percent of what is considered a normal work day

in the community. These situations will be dealt with on a case-by-case basis depending on the complexity of the Projects.

NMFS' PIAO will conduct an initial review for completeness and compliance with the information described above. Copies of proposals that pass the initial review will be provided to the Council's designee for Advisory Panel merit review and technical evaluation. Proposals not following the format or not including the information described above will be returned to the applicant.

An Advisory Panel, consisting of no more than eight individuals who are knowledgeable or experienced in traditional indigenous fishery practices of western Pacific communities and who are not members or employees of the Council, will review and rank the proposals. (Magnuson-Stevens Act, section 305 note, Section 111(b)(3)(A) of the Sustainable Fisheries Act, Pub. L. 104-297).

After the Advisory Panel has evaluated and ranked the proposals on technical merit, the Advisory Panel will develop recommendations for the fair and equitable allocation of available funding based on geographic distribution or diversity of the Projects. The Advisory Panel will submit these rankings and recommendations to the Council's designee. The Council's designee shall, within 45 days of receipt, officially forward the Advisory Panel's rankings and recommended project proposals to the PIAO Federal Program Officer for action. Proposals that the Advisory panel has not recommended for consideration for Federal funding will also be transmitted to the Federal Program Officer with an explanation of why the proposal was not recommended, for the record related to this solicitation. Proposals not recommended for funding will be retained by the PIAO for at least 24 months and a letter with a brief explanation as to why the proposal was not recommended for funding will be sent to the Responsible Party.

(B) If a proposal is recommended by the Advisory Panel, through the Council's designee, for consideration for Federal funding, the selected party will be required to submit, to NMFS PIAO, a grant application with all the required documentation necessary to complete the NOAA grants process. Copies of appropriate forms will be provided to the responsible parties whose Projects are recommended for consideration for Federal funding.

However, please note that, as discussed below, this is not the end of the review process. Therefore, projects

should not be initiated in expectation of Federal funding until receipt of an award duly executed by the Grants Officer.

If applicants incur any costs prior to an award being made, they do so at the risk of not being reimbursed by the Federal Government. Notwithstanding any verbal or written assurance, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

If the Assistant Administrator for Fisheries accepts a proposal and/or a grant application for a Project not in accordance with the rank given to such Project or the recommendation of the Advisory Panel, NMFS will consult with the Council's designee and provide a detailed written explanation of the reasons for the action based on geographical distribution or diversity in the nature of the Projects.

#### **V. Obligation of Responsible Parties**

A responsible party must provide information necessary for the evaluation of the Project and accompanying grant application. The application must include one signed original and two copies of the signed application. The responsible party must also be available, upon request, to respond to questions during all phases of review and evaluation of applications.

#### **VI. Project Evaluation Standards**

Evaluation of Project proposals - The Advisory Panel will review the merits of and rank proposals. The Advisory Panel can assign a maximum of 40 points to any one proposal based on the following selection standards.

1. Benefit to the community - Proposals will be evaluated on the short-term and long-term goal(s) addressed by the Project and how they address the Funding Priorities (section VII). (10 points)

2. Project design and approach - Proposals will be evaluated on the strengths and/or weaknesses of the Project design relative to the degree of involvement by the indigenous community members and to securing productive results. The design and approach should be appropriate to the aims of the Project. (10 points)

3. Experience and qualifications of personnel - The merits of each proposal will also be based on past activities and accomplishments of the responsible party in relation to the proposed Project as well as their technical, managerial and organizational skills. (5 points)

4. Project evaluation - The effectiveness of the proposed procedures and criteria to monitor and evaluate the success or failure of the

Project in terms of meeting its objectives will be examined. (5 points)

5. Project budget - Allocation and justification of the budget will be evaluated. Costs should be reasonable and commensurate with the proposed statement of work. (10 points)

#### **VII. Funding Priorities**

Responsible parties should ensure that their proposals address one or more of the following priorities, which are listed alphabetically with no one area carrying a higher priority than any other. If more than one priority is selected, the responsible party should list first the priority that most closely reflects the objectives of the proposed Project.

- A. Promote Economic Growth and Stability in Indigenous Communities—Maintain lifestyles within communities by promoting fisheries-related activities that increase employment and household income and/or enhance economic self-sufficiency through reduced dependency on a cash economy.

- B. Promote Fishery Resource Stewardship by Indigenous Communities—Encourage responsible and sustainable use of the marine environment by indigenous communities through revitalization or preservation of traditional marine resource use values, knowledge and practices appropriate for contemporary fisheries management.

- C. Promote Self-Determination in Indigenous Communities—Improve opportunities for economic self-determination by indigenous communities through training and vocational education in fish harvesting, storage, processing, distribution and marketing.

- D. Promote Solidarity in Indigenous Communities—Develop approaches to strengthening cultural identity and enhancing cooperation and cohesiveness in indigenous communities through utilization and management of fishery resources.

#### **VIII. Obligations of Successful Responsible Parties**

A recipient (successful responsible party) of a grant award must: (1) manage the day-to-day operations of the Project, take responsibility for the performance of all activities for which the funds are granted, and take responsibility for all administrative and managerial conditions of the award; (2) keep records sufficient to document any costs incurred under the award and make them available for audit and examination by the Secretary, the Comptroller General of the United

States, or their authorized representatives; (3) submit Project status reports on the use of funds and progress of the Project to NOAA within 30 days after the end of each 6-month period, (these reports will be submitted to the office specified in the grant award); and (4) submit a final report within 90 days of completion of the Project or the end of the grant period to NOAA. The final report must describe the Project, provide an evaluation of the work performed, including the results and benefits of the Project at a sufficient level of detail to enable NOAA to determine the overall success of the completed Project. Reports should be submitted in electronic format, if possible, so they can be distributed in a timely fashion to as wide an audience as possible.

The responsible party has the obligation of obtaining any necessary permits or authorizations required to carry out the Project as proposed. The release of funds for certain tasks may be conditioned to a grant recipient's meeting specific performance standards established in a grant's Special Award Conditions.

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the *Federal Register* notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However,

please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department v. Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case is finally resolved, the Department of Commerce will provide further information on implementation of Executive Order 13202. To obtain a copy of this notice and the Executive Orders either go to the "Federal Register Online via GPO Access" at: <http://www.access.gpo.gov/su-docs/aces/aces140.html> or contact either party in **FOR FURTHER INFORMATION CONTACT**.

#### Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this action. As a result, a Regulatory Flexibility Analysis was not prepared. This action is anticipated to lead to economic and social benefits for

qualifying communities. This action will allow the distribution of funds through grants to eligible communities to establish Projects. It is anticipated that the economic and social benefits of approved Projects will outweigh their associated costs.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

This notice refers to collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF-LLL have been approved by the Office of Management and Budget under the respective control numbers 0348-0043, 0348-0044, and 0348-0046.

A solicitation for applications will also appear in the "Commerce Business Daily."

Dated: April 10, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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**BILLING CODE 3510-22-S**