

as requested in this petition. A new research effort would be needed to generate this data. Consequently, we conclude that there is no potential agency action that can result in initiation of the rulemaking process in the near future. Since there is no possibility of rulemaking action in the near future, the petition is denied.

**Authority:** 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: July 17, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 040628196-4196-01; I.D. 061704A]

**RIN 0648-AQ92**

#### Fisheries Off the West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule that would limit entry into the American Samoa-based pelagic longline fishery. This proposed rule, which would implement Amendment 11 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP), is intended to: avoid a possible "boom and bust" cycle of development that could disrupt community participation in the small-scale pelagic fishery; establish an accepted regulatory framework for the American Samoa-based longline fishery; reduce the potential for the EEZ around American Samoa; maintain local catch rates of albacore tuna at economically viable levels; and provide opportunity for substantial participation in the large vessel (greater than 50 ft or 15.1 m in length) sector of the fishery by indigenous people of American Samoa. This proposed rule would apply to the owners and operators of vessels that fish for pelagic management species under Hawaii limited access longline permits

or western Pacific general longline permits within the EEZ and high seas around the Western Pacific Region (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Midway, Johnston, and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands).

**DATES:** Comments on this proposed rule must be received by September 7, 2004.

**ADDRESSES:** Written comments on this proposed rule or its Initial Regulatory Flexibility Analysis (IRFA) should be mailed to William Robinson, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; or faxed to 808-973-2941.

Comments will also be accepted via e-mail and should be sent to

AQ92@noaa.gov. Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>. Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this proposed rule may be submitted to William Robinson (see **ADDRESSES**) and to David Rostker, Office of Management and Budget (OMB), by email at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by facsimile (Fax) to 202-395-7285. Copies of Amendment 11, which includes an Environmental Assessment (EA) and an IRFA, may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. Suite 1400, Honolulu, HI 96813 or on the internet at <http://www.wpcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:** Eric Kingma, Council, at 808-522-8220 or Alvin Katekaru, PIRO, at 808-973-2937.

**SUPPLEMENTARY INFORMATION:** The pelagic longline fishery within the EEZ around American Samoa was established in 1995 by fishermen operating small "alias" twin-hulled vessels less than 40 ft (12.2 m) in length. The American Samoa-based longline fishery, which primarily targets albacore tuna for domestic canning, has undergone rapid expansion since 1995. Between 1997 and 2002 the longline fleet increased from approximately 21 mostly small vessels to 75 vessels of various sizes and capabilities. Of the 75 active longline vessels, 40 were alias 40 ft (12.2 m) or less in length, 5 vessels were greater than 40 ft (12.2 m) and ranged up to 50 ft (15.2 m) in length, 15 vessels were greater than 50 ft (15.2 m) ranged up to 70 ft (21.3 m) in length, and 15 vessels are greater than 70 ft (21.3 m) in length. Generally, vessels over 50 ft (15.2 m) set five to six times more hooks than the smaller vessels.

Due to regional geography, operators of longline vessels based in American Samoa have access to limited fishing grounds because the EEZ around American Samoa is bounded on all sides by the EEZ's of neighboring countries. These shared boundaries are generally less than 200 miles from American Samoa's shores, and therefore the U.S. has only 113,560 nm<sup>2</sup> (389,997 km<sup>2</sup>) of EEZ around American Samoa.

To avoid gear conflicts between small and large vessels, NMFS issued a final rule on January 30, 2002, (67 FR 4369), prohibiting large vessels >50 ft (15.2 m) from fishing for pelagic species within 50 nm around American Samoa (a few large-scale boats received exemptions to the large vessel closed area). As a result, most of the large-scale longline fishing effort became concentrated in the remaining 260,000 km<sup>2</sup> (75,700 nm<sup>2</sup>) of the EEZ (outside of 50 nm) around American Samoa. It was determined that an unrestrained longline fishery has the potential of reaching a hook density level of 70 hooks per km<sup>2</sup> per year (20 hooks per nm<sup>2</sup> per year). And it was also known that a hook density of 55 hooks per km<sup>2</sup> per year (16 hooks per nm<sup>2</sup> per year) is likely to result in gear conflict in the fishery. Therefore, concern was raised that the large vessel closed area alone will not prevent gear conflicts. It became readily apparent that preventing gear conflicts among the longliners in the EEZ around American Samoa might require a limited entry program.

In addition to gear conflicts, over-capitalization in the American Samoa-based longline fishery may produce conditions not consistent with the objectives of the Pelagics FMP. Such conditions may include, among other things, a reduction in local catch rates of albacore tuna below economically viable levels, and a possible "boom and bust" cycle of development that could disrupt current community participation and future participation by indigenous American Samoans within the fishery.

To avoid the previously mentioned conditions listed above, the Council convened several public workshops in 2001 regarding the management of the expanding American Samoa longline fishery. The workshops focused on various management options such as catch quotas, effort restrictions (e.g. hook limits), and landing restrictions. Overall, the general consensus among workshop participants, which included longline fishermen and community members, was that a limited entry program was needed for the American Samoa-based longline fishery.

In 2002, the Council prepared an amendment to the Pelagics FMP

(Amendment 11). At its 113th meeting in June 2002 (67 FR 39330), the Council took final action approving Amendment 11 that would establish a Federal limited entry program for the American Samoa-based longline fishery. It is estimated that the number of vessels authorized for use under an American Samoa limited access longline permits will not exceed 138.

This proposed rule would require that American Samoa longline limited access permits only be issued to individuals who owned vessels that were used to legally harvest Pacific pelagic management unit species with longline gear in the EEZ around American Samoa (with those fish landed in American Samoa) at some time prior to March 22, 2002. To solicit participation in the proposed limited entry program, NMFS would publish a notice in the **Federal Register** and the Regional Administrator would send notices to persons on the American Samoa pelagics mailing list, in addition to other means to notify prospective applicants of the availability of permits.

Under this proposed rule, permits would be established for four categories based on vessel length: (a) less than or equal to 40 ft (12.2 m); (b) over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive; (c) over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive; and (d) over 70 ft (21.3 m). The proposed rule would also set a schedule of 120 days from the effective date of the final rule for individuals to apply for an initial permit, and if found to qualify for an initial permit, would provide another 120 days to register a vessel to that permit. The proposed rule would also allow for 26 "upgrade permits" to be made available, following the issuance of initial limited access permits, for the exclusive use of permit holders in the smallest vessel size class (less than or equal to 40 ft (12.2 m)), with priority based on documented historical participation in the fishery. Those receiving an "upgrade permit" would not be allowed to transfer their new permit for 3 years. All other permits would be transferable to any individual who could document (regardless of date) that they worked on a vessel that caught Pacific pelagic management species on longline gear in the EEZ around American Samoa, with those fish landed in American Samoa. This proposed rule would also: prohibit any individual from owning more than 10 percent of the maximum permits allowed (in all vessel size classes combined), with any fractional interest in a permit counted as a whole permit; establish an administrative fee for the issuance, renewal, or transfer of any permit; require documented landings of

at least 1,000 lb (455 kg) every 3 consecutive calendar years for vessels in the smaller vessel size classes, and at least 5,000 lb (2,273 kg) every 3 consecutive calendar years for vessels in the two larger vessel size classes in order to renew permits; require all vessels permitted under the limited access system that are 50 ft (15.2 m) in length or greater carry active vessel monitoring systems (VMS) if requested by NMFS; require vessels greater than 40 ft (12.2 m) in length to carry observers if requested by NMFS; and require operators of permitted vessels greater than 40 ft (12.2 m) in length to notify NMFS no less than 72 hours before embarking on a longline fishing trip.

#### Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA for this amendment that discusses the impact on the environment as a result of this rule. A copy of the EA is available from Kitty M. Simonds, Executive Director, WPFMC (See **ADDRESSES**).

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

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, its objectives, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

Based on fishing information and vessel ownership records available from the Government of American Samoa's Department of Safety, NMFS anticipates that 138 entities that owned active longline vessels prior to the control date of March 21, 2002, will be eligible for limited access permits. Of these, it is believed that 93 vessels were less than or equal to 40 ft (12.2 m) in length, 9 were greater than 40 ft (12.2 m) ranging up to 50 ft (15.2 m) in length inclusive, 15 were greater than 50 ft (15.2 m) ranging up to 70 ft (21.3 m) in length inclusive, and 21 were greater than 70 ft (21.3 m) in length. The average capital investment in vessels less than 40 ft (12.2 m) is estimated to be between \$25,000 and \$125,000, with annual

landings of approximately 50,000 lbs (22,680 kg) and annual ex-vessel revenues estimated to average \$65,000. These are typically catamaran style vessels which average 50–100 one to two day fishing trips annually. These vessels are permanently based in American Samoa and may have been used to pelagic handline or troll in the past. Longline vessels greater than 40 ft (12.2 m) are typically monohull vessels with an average capital investment of up to \$400,000. These vessels take 17 to 28 fishing trips annually, with trips extending from 4 to 25 days. Annual landings for these vessels range from 200,000 lb to 600,000 lb (90,909.1 kg - 272,727.3 kg) per vessel, with an ex-vessel revenue of \$220,000 to \$660,000. These vessels are currently based in American Samoa, and have also been used in other Pacific pelagic longline or jig fisheries. Based on their ex-vessel revenues, all of these entities are considered to be small businesses with annual revenues of less than \$3.5 million each.

Under this action, these small entities or businesses would be required to submit applications for permits to participate in the American Samoa-based limited access longline fishery and provide information of their vessel ownership and participation in the fishery. As such this proposed rule contains collection-of-information requirements subject to review and approval by the OMB pursuant to the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The annual collection-of-information burden to fishermen is estimated at 181 hours: 112 hours for initial permits, 20 hours for appeals, 49 hours for permit upgrades and transfers. It is estimated that the time required by a fisherman to compile, organize, and submit documentation for each permit application is 45 minutes and 2 hours for each permit appeal case. Since the longline limited access permits are valid for a 3-year period (until 2007), clearance for collection-of-information concerning permit renewals will be addressed at a later date, prior to expiration of the current collection-of-information (OMB No. 0648-0490) on December 31, 2006.

Besides the collection-of-information requirement associated with the limited access permit program, this proposed rule would require operators of large (greater than 40 ft (12.2 m) in length) fishing vessels registered with American Samoa longline limited access permits to notify NMFS at least 72 hours prior to leaving port on a longline fishing trip targeting Pacific pelagic management

unit species in the EEZ around American Samoa. Notification is necessary for NMFS to determine whether or not observers should be placed on these large vessels. It is estimated that the time required by a vessel operator to notify NMFS prior to each trip is 3 minutes per telephone call. The collection-of-information burden to fishermen is estimated at 67 hours annually, an addition to the currently approved collection under OMB No. 0648-0214).

This proposed rule also would require vessels greater than 50 ft (15.2 m) in length and registered with American Samoa longline limited access permits to carry vessel monitoring system (VMS) units, if directed to do so by NMFS. While the vessel is at sea, NMFS will receive from the VMS unit information on the position of the vessel. NMFS uses the reports to monitor vessel location and activities, while enforcing the established large-vessel pelagic fishing area closure around American Samoa. It is estimated that the annual burden of this new collection of information is 175 hours. This includes the time to install the VMS units, VMS maintenance, and transmission of automated vessel position reports. Since the VMS units automatically transmits reports automatically, there is no requirement for the fishermen themselves to report to NMFS on the location of their vessels while at sea.

The proposed rule would require that vessels greater than 40 feet (12.2 m) in length carry a vessel observer if directed by NMFS. Potential costs of this requirement include the reduced accommodations available for crew and, depending on the size of the vessel, the cost of reduced fishing efficiency as a result of a reduction in crew size and crowding on board the vessel.

Public comment is sought on the proposed rule, in addition to whether the collection of information requirement is appropriate for the proposed rule; if the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on the proposed rule to William Robinson, Regional Administrator (see ADDRESSES) or any other aspects regarding the collection of information requirements to William Robinson or by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202-395-283.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Ten alternatives, including the preferred alternative, were considered. The alternatives included various combinations of measures that addressed: (1) how longline fishing effort in the EEZ around American Samoa would be limited (including no-action, establishing a limited access program, and establishing a per-trip landing limit of 5,000 pounds); (2) whether operators of longline vessels in the EEZ around American Samoa would be required to land all captured pelagic management unit species (PMUS) in order to minimize bycatch; (3) whether longline vessels greater than 50 feet (15.2 m) in length would be required to carry and operate a transmitter as part of a vessel monitoring system (VMS); and (4) whether longline vessels greater than 40 feet (12.2 m) in length would be required to carry a vessel observer if directed by NMFS.

For those alternatives that would establish a limited access program, the combinations of measures further addressed: (a) what the limit on permits would be (ranging from 106 to 215 total permits, as well as one alternative in which the initial number of available permits would be equal to the number of individuals with historical experience in the fishery but after allowing the fleet size to decrease through attrition the number of available permits would ultimately be limited to the number of permits predicted to result in an annual fishing effort level of no more than 7.15 million hooks in the nearshore area (within 50 miles of shore) and 14.3 million hooks in the offshore area (beyond 50 miles from shore); (b) how the limited number of permits would be allocated among vessel size classes (with various allocations among four or five vessel size classes, with zero permits available for vessels greater than 100 feet (30.4 m) in length in all but two alternatives); (c) how the available permits would be initially allocated (including allowing initial entry only to individuals that held a longline permit and landed PMUS in American Samoa prior to March 21, 2002, allowing initial entry only to individuals that owned a longline vessel on March 21, 2002 that was used to harvest PMUS from the EEZ around American Samoa and land them in American Samoa prior to March 21, 2002, and allowing entry only to

individuals that owned a longline vessel on or before March 21, 2002 that was used to harvest PMUS from the EEZ around American Samoa and land them in American Samoa prior to March 21, 2002; (d) how many permits would be reserved for participants indigenous to American Samoa (ranging from zero to 100 percent of the permits for certain vessel size classes); (e) how many permits would be reserved for participants initially using vessels in the smallest size class (ranging from zero to 26 "upgrade" permits that could be used by holders of permits for the smallest size class to upgrade to permits for larger size classes); (f) how available permits would be allocated in the future (including giving priority according to the date of application, giving priority according to the amount of historical pelagic fishing based out of American Samoa, giving first priority to permit holders wanting to upgrade to a larger vessel size class then according to the amount of historical pelagic fishing based out of American Samoa, giving priority first according to the vessel size class (with smaller classes given higher priority) than according to the earliest date of a longline landing in American Samoa); (g) whether permits could be re-registered to replacement vessels (including allowing re-registrations to vessels of any size class provided that a permit in that size class is available and allowing re-registrations only to vessels in the same size class); (h) whether maintenance of a permit would be contingent on continued participation in the fishery that is, whether there would be a "use-it-or-lose-it" requirement (in all cases, yes, ranging from having to make a landing at least once every year to at least once every three years, with various minimum qualifying landing tonnages according to vessel size class); and (i) whether permits would be transferable among holders (including not allowing transfers, allowing transfers only by holders of permits for the smallest vessel size class and only to immediate family or community groups, allowing transfers only by indigenous holders of permits for smallest size class and only to immediate family or community groups, and in the case of "upgrade" permits, allowing transfers only after three years).

The alternative with a per-trip landing limit of 5,000 pounds was rejected because it would likely result in poorer economic performance than a limited access program and it would encourage high-grading and bycatch. The alternatives that would require that all captured PMUS be landed were rejected

because they would be economically inefficient. The alternatives that would not have required that longline vessels greater than 50 feet (15.2 m) in length carry and operate VMS transmitters or not require that longline vessels greater than 40 feet (12.2 m) in length carry a vessel observer if directed by NMFS were rejected because they would not ensure an adequately high level of compliance with certain fishery regulations and not ensure that adequate information about fishing activities is gathered. The alternatives with larger permit limits than the preferred alternative (including the no-action alternative) were rejected because they would be unlikely to sufficiently reduce the potential for gear conflict and catch competition. The alternatives with smaller permit limits than the preferred alternative were rejected because they were determined to be unfair to some prospective participants and socially unacceptable. The alternatives with fewer permits allocated to the smallest vessel size class than the preferred alternative, as well as those without provisions for permit upgrades from the smallest to the larger vessel size classes, those with a one-year rather than three-year use-it-or-lose-it requirement, and those that would not have allowed permit transfers, were rejected because they would be unlikely to maintain sufficiently high levels of participation by American Samoa residents and individuals who have traditionally operated smaller vessels.

It has been determined that there are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

In December 2003, a formal section 7 consultation under the Endangered Species Act was initiated for the new Pelagics FMP management measures to implement new technologies for western Pacific longline fisheries, in addition to proposed Amendment 11. In a biological opinion issued on February 23, 2004, NMFS determined that fishing activities conducted under Amendment 11 are not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of critical habitat.

#### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: July 15, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

#### **PART 660—FISHERIES OFF THE WEST COAST STATES AND IN THE WESTERN PACIFIC**

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.12, the definitions of “Fisheries Management Division (FMD)”, “Longline general permit”, and “Pacific Islands Area Office” are removed, the definition for “Special Agent-In-Charge (SAC)” is revised, and new definitions for “American Samoa longline limited access permit”, “American Samoa pelagics mailing list”, “Freeboard”, “Hawaiian Archipelago”, “Pacific Islands Regional Office (PIRO)”, “Pacific Remote Island Areas (PRIA) pelagic troll and handline fishing permit”, “Western Pacific Fishery Management Area” and “Western Pacific general longline permit” are added in alphabetical order to read as follows:

#### **§ 660.12 Definitions.**

\* \* \* \* \*

*American Samoa longline limited access permit* means the permit required by § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around American Samoa to fish for Pacific pelagic management unit species using longline gear or to land or transship Pacific pelagic management unit species that were caught in the EEZ around American Samoa using longline gear.

*American Samoa pelagics mailing list* means the list maintained by the Pacific Islands Regional Office of names and mailing addresses of parties interested in receiving notices of availability for American Samoa longline limited access permits.

\* \* \* \* \*

*Freeboard* means the straight-line vertical distance between a vessel's working deck and the sea surface. If the vessel does not have gunwale door or stern door that exposes the working deck, freeboard means the straight-line vertical distance between the top of a vessel's railing and the sea surface.

\* \* \* \* \*

*Hawaiian Archipelago* means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

\* \* \* \* \*

*Pacific Islands Regional Office (PIRO)* means the headquarters of the Pacific Islands Region, NMFS, located at 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814; telephone number (808) 973-2937.

\* \* \* \* \*

*Pacific Remote Island Areas (PRIA) pelagic troll and handline fishing permit* means the permit required by § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around the PRIA to fish for Pacific pelagic management unit species using pelagic handline or troll fishing methods.

\* \* \* \* \*

*Special Agent-In-Charge (SAC)* means the Special-Agent-In-Charge, NMFS, Pacific Islands Enforcement Division, or a designee of the SAC, located at 300 Ala Moana Blvd., Suite 7-118, Honolulu, Hawaii, 96850; telephone number (808) 541-2727.

\* \* \* \* \*

*Western Pacific Fishery Management Area* means those waters shoreward of the outer boundary of the EEZ around American Samoa, Guam, Hawaii, the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands.

*Western Pacific general longline permit* means the permit authorized under § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around the Guam, the Northern Mariana Islands, Johnston or Palmyra Atolls, Kingman Reef, or Wake, Jarvis, Baker or Howland Islands to fish for Pacific pelagic management unit species using longline gear or to land or to transship Pacific pelagic management unit species that were caught using longline gear.

3. In § 660.13, paragraphs (d) and (e), and the first and last sentences of paragraph (f)(2) are revised to read as follows:

#### **§ 660.13 Permits and fees.**

\* \* \* \* \*

(d) *Change in application information.* A minimum of 10 days should be given for PIRO to record any change in information from the permit application submitted under paragraph (c) of this section, except in the event of a complete change in the ownership of a vessel registered to an American Samoa longline limited access permit, in which case the permit holder must notify PIRO within 30 days of the change. Failure to report such changes may result in invalidation of the permit.

(e) *Issuance.* After receiving a complete application, the Regional Administrator will issue a permit to an

applicant who is eligible under §§ 660.21, 660.36, 660.41, 660.61, 660.601, or 660.8, or 660.602 as appropriate.

(f) *Fees.* \* \* \*

(2) PIRO will charge a fee for each application for a Hawaii longline limited access permit, Mau Zone limited access permit, coral reef ecosystem special permit, or a American Samoa longline limited access permit (including permit transfers and renewals). \* \* \* Failure to pay the fee will preclude the issuance, transfer or renewal of a Hawaii longline limited access permit, Mau Zone limited access permit, coral reef ecosystem special permit, or an American Samoa longline limited access permit.

\* \* \* \* \*

4. Section 660.21 is revised to read as follows:

**§ 660.21 Permits.**

(a) A vessel of the United States must be registered for use with a valid permit under the High Seas Fishing Compliance Act if that vessel is used to fish on the high seas, as required under § 300.15 of this title.

(b) A vessel of the United States must be registered for use under a valid Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around the Hawaiian Archipelago; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago, Pacific pelagic management unit species that were harvested using longline gear.

(c) A vessel of the United States must be registered for use under a valid American Samoa longline limited access permit, in accordance with § 660.36, if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around American Samoa; or

(2) To land shoreward of the outer boundary of the EEZ around American Samoa Pacific pelagic management unit species that were harvested using longline gear in the EEZ around American Samoa; or

(3) To transship shoreward of the outer boundary of the EEZ around American Samoa Pacific pelagic management unit species that were harvested using longline gear in the EEZ around American Samoa or on the high seas.

(d) A vessel of the United States must be registered for use under a valid Western Pacific longline general permit, American Samoa longline limited access

permit, or Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll); or

(2) To land or transship shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll), Pacific pelagic management unit species that were harvested using longline gear.

(e) A receiving vessel of the United States must be registered for use with a valid receiving vessel permit if that vessel is used to land or transship, within the Western Pacific Fishery Management Area, Pacific pelagic management unit species that were harvested using longline gear.

(f) A vessel of the United States must be registered for use with a valid PRIA pelagic troll and handline fishing permit if that vessel is used to fish for Pacific pelagic management unit species using pelagic handline or trolling fishing methods in the EEZ around the PRIA.

(g) Any required permit must be on board the vessel and available for inspection by an authorized agent, except that, if the permit was issued (or registered to the vessel) during the fishing trip in question, this requirement applies only after the start of any subsequent fishing trip.

(h) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(i) An application for a permit required under this section will be submitted to PIRO as described in § 660.13.

(j) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 660.13.

(k) A Hawaii longline limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) An application for a permit transfer must be submitted to PIRO as described in § 660.13(c).

(l) A Hawaii longline limited access permit will not be registered for use

with a vessel that has a LOA greater than 101 ft (30.8 m).

(m) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(n) *Permit Appeals.* Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal will be in writing, will state the action(s) appealed, and the reasons therefor, and will be submitted within 30 days of the action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part. In making such decision, the Administrator may review relevant portions of the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, to the extent such review would clarify the criteria in this part. Such decision will be based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (n)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) 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. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally 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.

(3) 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 the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final Agency action for purposes of the Administrative Procedure Act.

(4) In the case of a timely appeal from an American Samoa longline limited access permit initial permit decision, the Regional Administrator will issue the appellant a temporary American Samoa longline limited access permit. A temporary permit will expire 20 days after the Regional Administrator's final decision on the appeal. In no event will a temporary permit be effective for longer than 60 days.

(5) With the exception of temporary permits issued under paragraph (n)(4) of this section, any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefor.

5. Section 660.22 is revised to read as follows:

#### **§ 660.22 Prohibitions.**

In addition to the prohibitions specified in § 660.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to make and/or file all reports of Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in § 660.3, provided that the person is required to do so by applicable state law or regulation.

(b) Use a vessel without a valid permit issued under the High Seas Fishing Compliance Act to fish for Pacific pelagic management unit species using longline gear, on the high seas, in violation of §§ 300.15 and 660.21(a) of this title.

(c) Use a vessel in the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear in violation of § 660.21(b)(1).

(d) Use a vessel shoreward of the outer boundary of the EEZ around the

Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to land or tranship Pacific pelagic management unit species that were harvested with longline gear, in violation of § 660.21(b)(2).

(e) Use a vessel in the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of § 660.21(c)(1).

(f) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to land Pacific pelagic management unit species that were caught with longline gear within the EEZ around American Samoa, in violation of § 660.21(c)(2).

(g) Use a vessel within the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to tranship Pacific pelagic management unit species that were caught with longline gear, in violation of § 660.21(c)(3).

(h) Use a vessel in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific longline general permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of § 660.21(d)(1).

(i) Use a vessel shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific longline general permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to land or tranship Pacific pelagic management unit species that were harvested using longline gear, in violation of § 660.21(d)(2).

(j) Use a vessel in the Western Pacific Fishery Management Area to land or tranship Pacific pelagic management unit species caught by other vessels using longline gear, without a valid receiving vessel permit registered for use with that vessel, in violation of § 660.21(e).

(k) Use a vessel in the EEZ around the PRIA employing handline or trolling methods to fish for Pacific pelagic management unit species without a valid PRIA pelagic troll and handline

fishing permit registered for use for that vessel in violation of § 660.21(f).

(l) Fish in the fishery after failing to comply with the notification requirements in § 660.23.

(m) Fail to comply with notification requirements set forth in § 660.23 or in any EFP issued under § 660.17.

(n) Fail to comply with a term or condition governing the vessel monitoring system when using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class C or D American Samoa longline limited access permit in violation of § 660.25.

(o) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS in violation of § 660.25(d)(2).

(p) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel in violation of § 660.25(d)(2).

(q) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC in violation of § 660.25(d)(3).

(r) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit in violation of § 660.25(d)(3).

(s) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit in violation of § 660.25(d)(3).

(t) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer in violation of § 660.25(d)(3).

(u) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC in violation of § 660.25(d)(3).

(v) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.27, in violation of § 660.26.

(w) Fish for Pacific pelagic management unit species with longline gear within the protected species zone in violation of § 660.26(b).

(x) Fail to comply with a term or condition governing the observer program established in § 660.28 if using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class B, C or D American Samoa longline limited access permit, to fish

for Pacific pelagic management unit species using longline gear.

(y) Fail to comply with other terms and conditions that the Regional Administrator imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(z) Enter the EEZ around the Hawaiian Archipelago with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel.

(aa) Enter the EEZ around Guam, the Northern Mariana Islands, or PRIA with longline gear that is not stowed or secured in accordance with § 660.29 if operating a U.S. vessel without a valid Western Pacific longline general permit, American Samoa longline limited access permit, or Hawaii longline limited access permit, registered for use with that vessel.

(bb) Enter the EEZ around American Samoa with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid American Samoa longline limited access permit registered for use with that vessel.

(cc) Fail to carry, or fail to use, a line clipper, dip net, or dehooker on a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.32(a).

(dd) When operating a vessel registered for use under a American Samoa longline limited access permit or a Hawaii longline limited access permit, fail to comply with the sea turtle handling, resuscitation, and release requirements in violation of § 660.32(b).

(ee) Engage in shallow-setting without a valid shallow-set certificate for each shallow set made in violation of § 660.33(c).

(ff) Fail to attach a valid shallow-set certificate for each shallow-set to the original logbook form submitted to the Regional Administrator under § 660.14, in violation of § 660.33(c).

(gg) Possess float lines less than 20 meters in length on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, in violation of § 660.33(d).

(hh) Possess light sticks on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, in violation of § 660.33(d).

(ii) Transfer a shallow-set certificate to a person other than a holder of a Hawaii longline limited access permit in violation of § 660.33(e).

(jj) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with 10° offset, in violation of § 660.33(f).

(kk) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with bait other than mackerel-type bait in violation of 0° 660.33(g).

(ll) From a vessel registered for use under a Hawaii longline limited access permit, make any longline set not of the type (shallow-setting or deep-setting) indicated in the notification to the Regional Administrator pursuant to § 660.23(a), in violation of § 660.33(h).

(mm) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 660.33(b)(3)(ii), in violation of § 660.33(i).

(nn) Land or possess more than 10 swordfish on board a vessel registered for use under a Hawaii longline limited access permit on a fishing trip for which the permit holder notified NMFS under § 660.23(a) that the vessel would conduct a deep-setting trip, in violation of § 660.33(j).

(oo) Own or operate a vessel that is registered for use under a Hawaii longline limited access permit and engaged in longline fishing for Pacific pelagic management unit species and fail to be certified for completion of a NMFS protected species workshop in violation of § 660.34(a).

(pp) Operate a vessel registered for use under a Hawaii longline limited access permit while engaged in longline fishing without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.34(d).

(qq) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 660.35(a)(1) or (a)(2).

(rr) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 660.35(a)(3).

(ss) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35(a)(4), (a)(5), or (a)(6).

(tt) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35(a)(7), through (a)(9).

(uu) Fail to be begin the deployment of longline gear at least one hour after local sunset or fail to complete the setting process before local sunrise from a vessel registered for use under a Hawaii longline limited access permit while shallow-setting north of 23° N. lat. in violation of § 660.35(a)(1).

(vv) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35(b).

(ww) Fail to handle seabirds other than short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35(c).

(xx) Use a large vessel to fish for Pelagic management unit species within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 660.38.

(yy) Fish for Pacific pelagic management unit species using gear prohibited under § 660.30 or not permitted by an EFP issued under § 660.17.

6. Section 660.23 is revised to read as follows:

#### **§ 660.23 Notifications.**

(a) The permit holder for any vessel registered for use under a Hawaii longline limited access permit or for any vessel greater than 40 ft in length overall that is registered for use under an American Samoa longline limited access permit, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around the Hawaiian Archipelago or American Samoa. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional



Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8 a.m. and 5 p.m. (local time) on weekdays for NMFS to contact to arrange observer placement. Permit holders for vessels registered for use under Hawaii longline limited access permits must also provide notification of the trip type (either deep-setting or shallow-setting).

(b) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 660.12, must notify the NMFS Special-Agent-In-Charge immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

(c) The permit holder for any American Samoa longline limited access permit, or an agent designated by the permit holder, must notify the Regional Administrator within 30 days of a complete change in ownership of the vessel registered for use with the permit.

7. In § 660.25, paragraph (b), the first sentence of paragraph (c), and the introductory text of paragraph (d) are revised to read as follows:

**§ 660.25 Vessel monitoring systems.**

\* \* \* \* \*

(b) *Notification.* After a Hawaii longline limited access permit holder or size Class C or D American Samoa longline limited access permit holder has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(c) *Fees and Charges.* During the experimental VMS program, a Hawaii longline limited access permit holder or size Class C or D American Samoa longline permit holder with a size Class D or D permit shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directed to requirements under this section. \* \* \*

(d) *Permit holder duties.* The holder of a Hawaii longline limited access permit or a size Class C or D American Samoa longline permit and master of the vessel must:

\* \* \* \* \*

8. Section 660.36 is added to read as follows:

**§ 660.36 American Samoa Longline Limited Entry Program.**

(a) *General.* Under § 660.21(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. With the exception of reductions in permits in vessel size Class A under paragraph (c)(1) of this section, the maximum number of permits will be capped at the number of initial permits actually issued under paragraph (f)(1) of this section.

(b) *Terminology.* For purposes of this section, the following terms have these meanings:

(1) *Documented participation* means participation proved by a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa, or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest Pacific pelagic management unit species in the EEZ around American Samoa.

(2) *Family* means those people related by blood, marriage, and formal or informal adoption.

(c) *Vessel size classes.* The Regional Administrator shall issue American Samoa longline limited access permits in the following size classes:

(1) Class A: Vessels less than or equal to 40 ft (12.2 m) length overall. The maximum number will be reduced as Class B-1, C-1, and D-1 permits are issued under paragraph (e) of this section.

(2) Class B: Vessels over 40 ft (12.2 m) to 50 ft (15.2 m) length overall.

(3) Class B-1: Maximum number of 14 permits for vessels over 40 ft (12.2 m) to 50 ft (15.2 m) length overall, to be made available according to the following schedule:

(i) Four permits in the first calendar year after the Regional Administrator has issued all initial permits in Classes A, B, C, and D (initial issuance),

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus four additional permits,

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the

first eight, plus four additional permits, and

(iv) In the fourth calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first 12, plus two additional permits.

(4) Class C: Vessels over 50 ft (15.2 m) to 70 ft (21.3 m) length overall.

(5) Class C-1: Maximum number of six permits for vessels over 50 ft (15.2 m) to 70 ft (21.3 m) length overall, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance,

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits, and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(6) Class D: Vessels over 70 ft (21.3 m) length overall.

(7) Class D-1: Maximum number of 6 permits for vessels over 70 ft (21.3 m) length overall, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance,

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits, and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(d) A vessel subject to this section may only be registered with an American Samoa longline limited access permit of a size class equal to or larger than the vessel's length overall.

(e) *Initial permit qualification.* Any U.S. national or U.S. citizen or company, partnership, or corporation qualifies for an initial American Samoa longline limited access permit if the person, company, partnership, or corporation, on or prior to March 21, 2002, owned a vessel that was used during the time of their ownership to harvest Pacific pelagic management unit species with longline gear in the EEZ around American Samoa and that fish was landed in American Samoa:

(1) Prior to March 22, 2002, or

(2) Prior to June 28, 2002, provided that the person or business provided to NMFS or the Council, prior to March 22, 2002, a written notice of intent to participate in the pelagic longline fishery in the EEZ around American Samoa.

(f) *Initial permit issuance.* (1) Any application for issuance of an initial



permit must be submitted to the Pacific Islands Regional Office no later than 120 days after the effective date of the final rule. The Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of the availability of permits. Applications for initial permits must be made, and application fees paid, in accordance with §§ 660.13(c)(1), (d) and (f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers.

(2) Only permits of Class A, B, C, and D will be made available for initial issuance. Permits of Class B-1, C-1, and D-1, will be made available in subsequent calendar years.

(3) Within 30 days of receipt of a completed application, the Regional Administrator shall make a decision on whether the applicant qualifies for an initial permit and will notify the successful applicant by a dated letter. The successful applicant must register his or her vessel, of the equivalent size class or smaller to which the qualifying vessel would have belonged, to the permit within 120 days of the date of the letter of notification, and maintain this vessel registration to the permit for at least 120 days. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(4) An appeal of a denial of an application for an initial permit shall be processed in accordance with § 660.21(n) of this subpart.

(5) After all appeals on initial permits are concluded in any vessel size class, the maximum number of permits in that class shall be the number of permits issued during the initial issuance process (including appeals). The maximum number of permits will not change, except that the maximum number of Class A permits will be reduced if Class A permits are replaced by B-1, C-1, or D-1 permits under paragraph (h) of this section. Thereafter, if any Class A, B, C, or D permit becomes available, the Regional Administrator shall re-issue that permit

according to the process set forth in paragraph (g) of this section.

(g) *Additional permit issuance.* (1) If the number of permits issued in Class A, B, C, or D, falls below the maximum number of permits, the Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of any available permit(s) in that class. The Regional Administrator shall issue permits to persons according to the following priority standard:

(i) First priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class A sized vessel.

(ii) The next priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class B size, Class C size, or Class D size vessel, in that order.

(iii) In the event of a tie in the priority ranking between two or more applicants, then the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be ranked first in priority. If there is still a tie between two or more applicants, the Regional Administrator will select the successful applicant by an impartial lottery.

(2) Applications must be made, and application fees paid, in accordance with §§ 660.13(c)(1), (d), and (f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all

owners, partners, and corporate officers must be included. If the successful applicant fails to register a vessel to the permit within 120 days, the Regional Administrator shall issue a letter of notification to the next person on the priority list or, in the event that there are no more prospective applicants on the priority list, re-start the issuance process pursuant to paragraph (g)(1) of this section. Any person who fails to register the permit to a vessel under this paragraph within 120 days shall not be eligible to apply for a permit for 6 months from the date those 120 days expired.

(4) An appeal of a denial of an application for a permit shall be processed in accordance with § 660.21(n).

(h) *Class B-1, C-1, and D-1 Permits.*

(1) Permits of Class B-1, C-1, and D-1 may be initially issued only to persons who hold a Class A permit and who, prior to March 22, 2002, participated in the pelagic longline fishery around American Samoa.

(2) The Regional Administrator shall issue permits to persons for Class B-1, C-1, and D-1 permits based on each person's earliest documented participation, with the highest priority given to that person with the earliest date of documented participation.

(3) A permit holder who receives a Class B-1, C-1, or D-1 permit must relinquish his or her Class A permit and that permit will no longer be valid. The maximum number of Class A permits will be reduced accordingly.

(4) Within 30 days of receipt of a completed application for a Class B-1, C-1, and D-1 permit, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(5) An appeal of a denial of an application for a Class B-1, C-1, or D-1 permit shall be processed in accordance with § 660.21(n).

(6) If a Class B-1, C-1, or D-1 permit is relinquished, revoked, or not renewed pursuant to paragraph (j)(1) of this

section, the Regional Administrator shall make that permit available according to the procedure described in paragraphs (g)(1) through (g)(4) of this section.

(i) *Permit transfer.* The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. Applications for permit transfers must be submitted to the Regional Administrator within 30 days of the transferral date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 660.13(c).

(1) *Permits of all size classes except Class A.* An American Samoa longline limited access permit of any size class except Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(i)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(i)(2), and its implementing regulations, or

(ii) Any person with documented participation in the pelagic longline

fishery in the EEZ around American Samoa.

(2) *Class A Permits.* An American Samoa longline limited access permit of Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A family member of the permit holder,

(ii) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(i)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(i)(2), and its implementing regulations, or

(iii) Any person with documented participation in the pelagic longline fishery on a Class A size vessel in the EEZ around American Samoa prior to March 22, 2002.

(3) *Class B-1, C-1, and D-1 Permits.* Class B-1, C-1, and D-1 permits may not be transferred to a different owner for 3 years from the date of initial issuance, except by bequest or intestate succession if the permit holder dies during those 3 years. After the initial 3 years, Class B-1, C-1, and D-1 permits may be transferred only in accordance with the restrictions in paragraph (i)(1) of this section.

(j) *Permit renewal and registration of vessels—(1) Use Requirements.* An American Samoa longline limited access permit will not be renewed following 3 consecutive calendar years (beginning with the year after the permit was issued in the name of the current permit holder) in which the vessel(s) to which it is registered landed less than:

(i) For permit size Classes A or B: a total of 1,000 lb (455 kg) of Pacific pelagic management unit species

harvested in the EEZ around American Samoa using longline gear, or

(ii) For permit size Classes C or D: a total of 5,000 lb (2,273 kg) of Pacific pelagic management unit species harvested in the EEZ around American Samoa using longline gear.

(2) An American Samoa longline limited access permit will not be renewed if the owner of the vessel to which the permit is registered does not have on file with the Regional Administrator a valid protected species workshop certificate issued by NMFS, in accordance with § 660.34(c)(2).

(k) *Concentration of ownership of permits.* No more than 10 percent of the maximum number of permits, of all size classes combined, may be held by the same permit holder. Fractional interest will be counted as a full permit for the purpose of calculating whether the 10-percent standard has been reached.

(l) *Three-year review.* Within 3 years of the effective date of this rule the Council shall consider appropriate revisions to the America Samoa limited entry program after reviewing the effectiveness of the program with respect to its biological and socioeconomic objectives, concerning gear conflict, overfishing, enforceability, compliance, and other issues.

§§ 660.13, 660.21, 660.22, 660.27, 660.28, 660.38, 660.41, 660.42, 660.48, 660.49, 660.51, 660.61, 660.62, 660.63, 660.65, and 660.86 [Amended]

9. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
660.13 .....	Southwest Region .....	Western Pacific.
.....	FMD .....	Regional Administrator.
660.21 .....	Longline general permit .....	Western Pacific general longline permit.
.....	Pacific Area Office .....	PIRO.
.....	FMD .....	Regional Administrator.
660.22 .....	Longline general permit .....	Western Pacific general longline permit.
660.27 .....	Pacific Area Office .....	PIRO.
660.28 .....	Fisheries Observer Branch, Southwest Region .....	Observer Program, PIRO.
.....	Southwest Regional Administrator .....	Regional Administrator.
660.38 .....	Longline general permit .....	Western Pacific general longline permit.
660.41 .....	Pacific Area Office .....	PIRO.
.....	Regional Director .....	Regional Administrator.
660.42 .....	Regional Director .....	Regional Administrator.
660.48 .....	NMFS Law Enforcement Office .....	SAC.
660.49 .....	Regional Director .....	Regional Administrator.
660.51 .....	Regional Director .....	Regional Administrator.
660.61 .....	PIAO .....	PIRO.
660.62 .....	Regional Director .....	Regional Administrator.
660.63 .....	Pacific Area Office .....	PIRO.
660.65 .....	Pacific Area Office .....	PIRO.
660.86 .....	Pacific Islands Area Office .....	PIRO.

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