

(oo) Except when fishing under a western Pacific longline limited entry permit issued under §660.21, when a conventional monofilament longline is deployed by a vessel subject to this section, deploy fewer than 15 branch lines between any two floats, in violation of §660.720 (a)(v). Vessel operators using basket-style longline gear may not set less than 10 branch lines between any 2 floats when fishing in waters west of 150° W. long. north of the equator.

(pp) Except when fishing under a western Pacific longline limited entry permit issued under §660.21, fail to deploy longline gear such that the deepest point of the main longline between any two floats, *i.e.*, the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface, in violation of §660.720 (a)(vi).

§ 660.706 Pacific Coast Treaty Indian rights.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest HMS in their usual and accustomed (u&a) fishing areas in U.S. waters.

(b) Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) NMFS recognizes the following areas as marine u&a fishing grounds of the four Washington coastal tribes. The Makah u&a grounds were adjudicated in *U.S. v. Washington*, 626 F.Supp. 1405, 1466 (W.D. Wash. 1985), affirmed 730 F.2d 1314 (9th Cir. 1984). The u&a grounds of the Quileute, Hoh, and Quinault tribes have been recognized administratively by NMFS (*See, e.g.*, 64 FR 24087 (May 5, 1999) (u&a grounds for groundfish); 50 CFR 300.64(i) (u&a grounds for halibut)). The u&a grounds recognized by NMFS may be revised as ordered by a Federal court.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary of Commerce, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An

allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS Northwest Regional Administrator, at least 120 days prior to the time the allocation is desired to be effective, and will be subject to public review through the Council process. The Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary of Commerce will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is prima facie evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) Fishing (on a tribal allocation or under a Federal regulation applicable to tribal fisheries) by a member of a Pacific Coast treaty Indian tribe within that tribe's u&a fishing area is not subject to provisions of the HMS regulations applicable to non-treaty fisheries.

(g) Any member of a Pacific Coast treaty Indian tribe must comply with any applicable Federal and tribal laws and regulations, when participating in a tribal HMS fishery implemented under paragraph (d) of this section.

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that tribe's u&a fishing area, or for a species of HMS not covered by a treaty allocation or applicable Federal regulation, is subject to the HMS regulations applicable to non-treaty fisheries.

§ 660.707 Permits.

(a) *General.* This section applies to vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington.

(1) A commercial fishing vessel of the United States must be registered for use under a HMS permit that authorizes the use of specific gear, and a recreational charter vessel must be registered for use under a HMS permit if that vessel is used:

(i) To fish for HMS in the U.S. EEZ off the States of California, Oregon, and Washington; or

(ii) To land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington.

(2) The permit must be on board the vessel and available for inspection by an authorized officer, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(3) 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.

(4) 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) an HMS permit.

(b) *Application.* (1) Following publication of the final rule implementing the FMP, NMFS will issue permits to the owners of those vessels on a list of vessels obtained from owners previously applying for a permit under the authority of the High Seas Fishing Compliance Act, the Tuna Conventions Act of 1950, the Marine Mammal Protection Act, and the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, or whose vessels are listed on the vessel register of the Inter-American Tropical Tuna Commission.

(2) All permits issued by NMFS in accordance with paragraph (b)(1) of this section will authorize the use of specific fishing gear by the identified commercial fishing vessels.

(3) An owner of a vessel subject to these requirements who has not received an HMS permit from NMFS and who wants to engage in the fisheries must apply to the SFD for the required permit in accordance with the following:

(i) A Southwest Region Federal Fisheries application form may be obtained from the SFD or downloaded from the Southwest Region home page (<http://swr.nmfs.noaa.gov/permits.htm>) to apply for a permit under this section. A completed application is one that contains all the necessary information and signatures required.

(ii) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(iii) A permit will be issued by the SFD. If an application is denied, the SFD will indicate the reasons for denial.

(iv) *Appeals.* (A) Any applicant for an initial permit may appeal the initial issuance decision to the RA. To be considered by the RA, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the RA. The appellant may request an informal hearing on the appeal.

(B) Upon receipt of an appeal authorized by this section, the RA will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

(C) Upon receipt of sufficient information, the RA will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and the Council and any additional information submitted to or obtained by the RA, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the RA deems appropriate. The RA will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(D) If a hearing is requested, or if the RA determines that one is appropriate, the RA may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. 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

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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 RA.

(E) The RA may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the RA will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The RA's decision will constitute the final administrative action by NMFS on the matter.

(F) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the RA for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

(4) Permits issued under this subpart will remain valid until the first date of renewal, and permits may subsequently be renewed for 2-year terms. The renewal date will be the last day of the month designated by the last digit of the vessel identification number (*e.g.*, if the vessel identification number ends in 3, the renewal date is March 31, 2 years later). The first renewal requirement will occur after the first year of the initial permit but before the end of the second year of the initial permit.

(5) Replacement permits may be issued without charge to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(6) Any permit that has been altered, erased, or mutilated is invalid.

(c) *Display.* Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing HMS shoreward of the outer boundary of the fishery management area unless the vessel was at sea at the time the permit was issued. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(d) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

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§ 660.708 Reporting and record-keeping.

(a) *Logbooks.* The operator of any commercial fishing vessel and any recreational charter vessel fishing for HMS in the management area must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator or a state agency. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to either the Regional Administrator or the appropriate state management agency within 30 days of each landing or transshipment of HMS. Each form must be signed and dated by the fishing vessel operator.

(1) Logbooks that meet the logbook reporting requirement may be found at <http://swr.nmfs.noaa.gov/logbooks.htm> and include:

(i) The logbook required under 50 CFR 300.21 implementing the Tuna Conventions Act of 1950;

(ii) The logbook required under § 660.14 implementing the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region;

(iii) The logbook required by 50 CFR 300.17 implementing the High Seas Fishing Compliance Act of 1995.

(iv) Any logbook required by the fishery management agency of the States of California, Oregon, or Washington.

(2) Any holder of a permit who does not submit logbooks under any of the above authorities must submit a written request to the SFD for the appropriate logbook. The applicant must provide his or her name and address, the name of the vessel, and the type of fishing gear used.

(3) The Regional Administrator may, after consultation with the Council, act to modify the information to be provided on the fishing record forms.

(b) Any person who is required to do so by the applicable state law must