

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

05/06/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a revision of an information collection received on 02/25/2005.

TITLE: Southwest Region Permit Family of Forms - Pacific

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE
OMB NO.: 0648-0490
EXPIRATION DATE: 12/31/2006

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	150	25	0
New	195	85	0
Difference	45	60	0
Program Change		60	0
Adjustment		0	0

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
SOUTHWEST REGION PERMIT FAMILY OF FORMS – PACIFIC
OMB CONTROL NO. 0648-0490**

INTRODUCTION

This Supporting Statement describes one requirement to be added to the existing information collection under OMB No. 0648-0490. The figures on OMB 83-I, blocks 13 and 14 are comprehensive for the collection.

SECTION A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) established regional fishery management councils, such as the Western Pacific Fishery Management Council (WPFMC) and Pacific Fishery Management Council, to develop fishery management plans (FMPs) for fisheries in the U.S. exclusive economic zone (EEZ). These plans, if approved by the Secretary of Commerce (Secretary), are implemented by Federal regulations enforced by the National Marine Fisheries Service (NMFS) and U.S. Coast Guard, in cooperation with State agencies to the extent possible. FMPs regulate fishing to ensure the long-term productivity and optimum yield of the resources for the benefit of the U.S.

The WPFMC has management jurisdiction over fisheries in the Pacific Ocean seaward of American Samoa, Guam, Hawaii, Northern Mariana Islands, and certain other remote U.S. Pacific island possessions¹. WPFMC has prepared, and the Secretary has approved and implemented through regulations, FMPs for crustaceans, precious coral, pelagic, bottomfish/seamount groundfish fisheries, and coral reef ecosystems in the western Pacific region. The Pacific Fishery Management Council has prepared, and the Secretary has approved and implemented through regulations, FMPs for the coastal pelagic fisheries and highly migratory species off the U.S. West Coast. Each of these FMPs contains a requirement that commercial fishery participants obtain Federal permits for the fishery. There are three types of permits: basic fishery permits (e.g., western Pacific general longline fishing and receiving permits, precious coral permits), limited access permits for selected fisheries (e.g., Hawaii-based pelagic longline fishery, U.S. West Coast coastal pelagic fishery), and experimental fishing permits.

¹ Howland, Baker, Jarvis, Wake and Palmyra Islands, Johnston Atoll and Kingman Reef

This clearance request is for a revision to the currently approved collection of information under the Southwest Region Permit Family of Forms – Pacific (OMB No. 0648-0490). It is necessitated by Amendment 11 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP Amendment 11): “Measure to limit pelagic longline fishing effort in the Exclusive Economic Zone around American Samoa.” The objectives of the amendment are to: prevent overcapitalization in a small-scale insular pelagic fishery; reduce the potential for fishing gear conflict in the EEZ around American Samoa; help maintain local catch rates of albacore tuna at economically viable levels; and provide opportunity for greater participation by indigenous American Samoans in the large vessel (>16.6 m or 50 ft in length) pelagic longline fishery.

A management measure of Pelagics FMP Amendment 11 would establish a limit access permit program for the American Samoa-based pelagic longline fishery. Such a program requires the collection of information from potential initial participants and subsequent new entrants (via permit transfers) in the fishery. Initial limited access permits would only be issued to persons 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 (control date).

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information that is collected will be used by NMFS primarily to determine who is eligible for issuance of initial American Samoa longline limited access permits and for continued participation by qualifying persons in the American Samoa longline fishery. The collected information will also be used to process permit transfers and upgrades. Fishermen will be required to use a permit application form/supplementary information sheet (see attached), prepared by NMFS, for each permit action.

The information collected through permit applications are also essential ingredients in the management of the fishery. It would identify actual or potential participants in the fishery; it would help to measure the impacts of management controls on the participants in the fishery; and it would facilitate enforcement of fishery regulations. The information will provide an important link between NMFS and fishermen by making it easier for NMFS staff to contact participants in the fishery and advise them of changes to the regulations or fishery conditions. It also will give fishermen a direct point of contact in case they have questions or problems they want to bring to the attention of NMFS.

It is estimated that up to 150 applications for initial longline limited access permits and, of these initial applications, as many as 10 appeals concerning issuance of initial permits are projected to be processed by NMFS during the first year (2004). NMFS expects to receive up to 8 requests for permit upgrades (from initial permit holders) and 25 permit transfers (primarily non-initial permit holders) during each of years 2 (2005) and 3

(2006). The total number of respondents for the first three years of the American Samoa longline limited access permit program is 200 (150 initial plus 50 non-initial permit applicants). Under Pelagics FMP Amendment 11, renewals of American Samoa longline limited access permits begin in year 4 (2007). Because the currently approved collection expires on December 31, 2006 (prior to renewal of the limited access permits), NMFS is deferring clearance for permit renewals at this time. NMFS intends to request clearance for collection of information for permit renewals in the future, concurrent with a request to extend the currently approved permit family of forms for calendar years 2007 through 2010.

It is anticipated that the information collected, which is likely to include confidential fish catch statistics and proprietary fishing practice and strategy information, will not be disseminated to the public or used to support publicly disseminated information. The information gathered is primarily for internal agency use to allow the Regional Administrator to determine initial and continued participation in the fishery, in accordance with the permit eligibility criteria stipulated in Pelagics FMP Amendment 11.

NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality and privacy. See response #10 of this Supporting Statement for more information on confidentiality and privacy. If NMFS makes public non-confidential information, then prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The Pacific Islands Region's Web site at <http://swr.nmfs.noaa.gov/pir> is a primary means that will be available to interested persons for obtaining information on this collection.

4. Describe efforts to identify duplication.

NMFS carefully considered whether other collections by the Government of American Samoa might meet the information need presented above. It was concluded that no other collections would meet the need. The Government of American Samoa does not currently have a program that regulates participation or allocates fishing effort in its pelagic longline fishery.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

All of the vessels that are governed under an FMP in the western Pacific region and the U.S. West Coast coastal pelagic and highly migratory species fisheries are small business entities and are affected comparably. No special measures are needed to

accommodate different sized businesses. To the extent possible, only minimum information will be collected for determining eligibility to participate in the American Samoa-based pelagic longline fishery.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Without this collection or if the collection is conducted less frequently, it is not possible to implement a limited access permit program for the American Samoa-based pelagic longline fishery as envisioned under Pelagics FMP Amendment 11. The information collected is essential for implementing a system that distributes, monitors, and controls fishing effort allowable in the fishery.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with the OMB Guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Attached is a copy of the *Federal Register* notice on the proposed rule for Pelagics FMP Amendment 11 announcing the collection of information and soliciting public comment. There were no comments received that affected the proposed collection.

This collection of information was developed by WPFMC staff, fishermen advisors, and NMFS Pacific Islands Regional Office staff.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts are involved in this program.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The Magnuson-Stevens Act stipulates that data required to be submitted under a FMP shall be confidential and shall not be released pursuant to section 402(b) of the Act, except to Federal and Council employees who are responsible for fishery management plan development and monitoring. NOAA Administrative Order 216-100 also protects this information. The information provided by potential limited access permit holders under this collection will be maintained as confidential because it includes fish catch and effort data and information on fishing practice and strategy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature are asked.

12. Provide an estimate in hours of the burden of the collection of information.

The average annual burden hours is estimated at 60 hours under this collection as follows:

Year 1 Initial permits -150 applicants x 45 minutes = 112 hours
Permit appeals -10 appellants x 2 hours = 20 hours (total number of respondents = 150, including appellants)

Years 2 & 3 Permit upgrades-16 applicants x 45 minutes = 12 hours
Permit transfers- 50 transferees x 45 minutes = 37 hours (total number of respondents = 50 non-initial tranferees). These permits are renewed every three years, so each of the 200 permits is issued only once in the three-year period.

Total burden hours (3 years) = 181 hours (60 hr/yr). When added to the annual 25 hours for the current collection (annual permit renewal for 120 vessels in Hawaiian waters), total annual burden hours will be 85.

Total estimated respondents = 200 (150 initial plus 50 non-initial permit applicants). Average respondents per year = 67. When added to the 120 current annual respondents, this brings the average annual respondents to 187.

Three year total responses = 150+10+16+50 = 226; average 75/year. In addition to the 120 annual responses which are part of the existing collection, this brings the average annual responses to 195.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

There is no "start-up" capital cost for complying with this requirement. The annual cost to the respondents for postage, faxes, copies, etc., related to this collection is estimated at \$450 (~\$2 per response)

14. Provide estimates of annualized cost to the Federal government.

The estimated cost of this collection to the Federal government to administer this collection, which includes data base management, is \$2,666 (3 years = 200 responses x 160 min/permit x \$15/hr)

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This is a clearance request to revise the currently approved collection (OMB Control No.

0648490); therefore, it is a program change under a proposed rule for Pelagics FMP Amendment 11.

16. For collections whose results will be published, outline the plans for tabulation and publication.

No formal publication based solely on this collection of information is planned at this time. However, the information will be analyzed by NMFS to evaluate the administrative and operational effectiveness of the management regime under the American Samoa pelagic longline limited access permit program.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

The expiration date will be displayed in an appropriate manner, including in the Federal Register notice for the final rule implementing Pelagics FMP Amendment 11, if approved by the Secretary.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

[PRELIMINARY DRAFT]

American Samoa
Pelagic Longline Limited Access Program

Initial permit qualification requires U.S. national or U.S. citizen status. Please initial if you are either of the two: _____

Please check the appropriate box: [Non-Refundable Application Processing Fee: \$00.00]

Initial application (Please indicate vessel size classification):

A=40' or less B=40.1' – 50' C=50.1' – 70' C=70' or larger

Re-registration (Applies to vessels which have been sold or sunk)

Permit transfer (for vessels of class size A only)

Family member Community organization

NAME: _____
(Print first and last names or name of community organization)

Permit Upgrade (Please indicate vessel class size to which you are upgrading):

B-1=40.1' – 50' C-1=50.1' – 70' D-1=70' or larger

[Retired permit number: _____] **NOTE:** This option expires 03/21/2006

VESSEL NAME: _____ VESSEL REGISTRATION NUMBER: _____

VESSEL OWNER: _____ SOCIAL SECURITY NUMBER: _____
(First and Last Name)

Privacy Act Statement: Federal Regulations (at 50 CFR Part 660) authorize collection of this information. This information is used to verify the identity of the applicant(s) and to accurately retrieve confidential records related to federal commercial fishery permits. Disclosure of the Social Security Number is mandatory in accordance with the Debt Collection Act (31 USC 7701).

NAME OF CORPORATION OR PARTNERSHIP THAT OWNS THE VESSEL: _____
(Please use Supplementary Information Sheet to list names and addresses of owners, partners or officers)

BUSINESS ADDRESS: _____, _____, _____
(Number, street, apt.) (City/Village) (State) (Zip)

BUSINESS PHONE: _____ HOME PHONE: _____ FAX: _____
(Please include the area code for each number)

VESSEL CAPTAIN: _____ SOCIAL SECURITY NO.: _____
(First and Last Name)

CAPTAIN'S MAILING ADDRESS: Note: **If it is the same as the owner's business address, please check here**
_____, _____, _____
(Number, street, apt.) (City/Village) (State) (Zip)

PERMIT APPLICANT: _____ DATE: _____
(Print first and last name) (Signature)

Initial/new/lost permits and permit renewals: Owner fills out "Permit Applicant" information
Permit transfers: The current owner fills out "Permit Transferor" information, while the individual taking over the permit fills out the "Applicant" information.

PERMIT TRANSFEROR: _____ DATE: _____
(Current owner) (Print first and last name) (Signature)

PERMIT NUMBER OF TRANSFERRED PERMIT: _____

Please submit a copy of the vessel's current U.S. Coast Guard Certificate of Documentation (documented vessel) or registration certificate from the state/territorial agency (undocumented vessel) along with this form.

PRELIMINARY DRAFT

**American Samoa
Pelagic Longline Limited Access Program**

SUPPLEMENTARY INFORMATION SHEET

Company/Corporation officers, owners, or partners:

NAME

MAILING ADDRESS

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PAPERWORK REDUCTION ACT INFORMATION

Public reporting burden for this collection is estimated as follows: 45 minutes for American Samoa longline limited access initial permit issuance, renewal, transfer or upgrade. Send comments regarding this burden estimate and any other aspects of this collection of information, including suggestions for reducing this burden, to Pacific Islands Region Office Administrator, NMFS 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814.

This information is being collected to ensure accurate and timely records about the persons licensed to participate in fisheries under Federal regulations in the Western Pacific Region. This will enable NMFS and the Western Pacific Fishery Management Council to (a) determine who would be affected by changes in management; (b) inform license holders of changes in fishery regulations; and (c) determine whether the objectives of the fishery program are being achieved by monitoring entry and exit patterns and other regulatory changes on person in the regulated fisheries as well as in related fisheries. Responses to the collection are required to obtain the benefit of a license for the fishery involved (ref. 50 CFR 560.13). Data provided concerning the vessel and/or business of the respondents are handled as confidential under the Magnuson-Stevens Fishery Conservation and Management Act (Sec. 402 (b)). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Numbers.

Magnuson-Stevens Fishery Conservation and Management Act

Public Law 94-265

As amended through October 11, 1996

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) REQUIRED PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify--

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of

bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.--Proposed regulations which the Council deems necessary or appropriate for the purposes of--

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

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.

[FR Doc. 04-16655 Filed 7-21-04; 8:45 am]

BILLING CODE 4910-59-P

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 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 nm² (389,997 km²) 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 km² (75,700 nm²) 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 km² per year (20 hooks per nm² per year). And it was also known that a hook density of 55 hooks per km² per year (16 hooks per nm² 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 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 tranship 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 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 America Samoa-based cannery, retailer or wholesaler, an America 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) 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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