Federal Register

Thursday,
November 19, 2009

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 223, 404, and 665

Western Pacific Fisheries; Regulatory Restructuring; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 223, 404, and 665

[Docket No. 071220872–91160–02]

RIN 0648–AU71

Western Pacific Fisheries; Regulatory Restructuring

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

ACTION: Proposed rule; regulatory restructuring; request for comments.

SUMMARY: This proposed rule would restructure existing western Pacific fishery regulations. It would not make substantive changes to existing regulations. The regulations would be organized according to geographical areas, rather than target species as they are now, in order to be consistent with five new area-specific fishery ecosystem plans (FEP). This proposed rule would also amend references to the Paperwork Reduction Act (PRA) information collection requirements to reflect the restructuring. The purpose of this rule is to make the regulations easier for the public to use by organizing existing fishing regulations by geographic location.

DATES: Comments on this proposed rule must be received by December 4, 2009.

ADDRESSES: Comments on this proposed rule, identified by 0648–AU71, may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov;* or
- *Mail:* William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments will be posted for public viewing after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (if you wish to remain anonymous, enter ''NA'' in the required name and organization fields). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the five current western Pacific fishery management plans (FMPs) (Bottomfish and Seamount Groundfish FMP, Coral Reef Ecosystems FMP, Crustaceans FMP, Pelagics FMP, and Precious Corals FMP), the five new FEPs (American Samoa, Hawaii, Mariana Archipelago, Pacific Remote Island Areas, and Western Pacific Pelagics), and the Programmatic Environmental Impact Statement (PEIS) that was prepared for the FEPs and regulatory restructuring are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *http://www.wpcouncil.org.*

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 L. Robinson, NMFS PIR, and by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR, 808–944–2272.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also accessible at *http://www.gpoaccess.gov/fr.*

To date, fisheries in the western Pacific have been managed through five species- or fishery-directed FMPs: For bottomfish and seamount groundfish, crustaceans, precious corals, coral reef ecosystems, and pelagic species. The FEPs cover archipelagos or other broad geographic areas, including American Samoa, the Mariana Islands (Guam and the Northern Mariana Islands), Hawaii, the Pacific remote island areas (PRIA) (Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island), and one FEP would manage western Pacific pelagic fisheries. The FEPs incorporate and reorganize elements of the five existing FMPs, and do not change the current management regime. The FEPs enable the Council and NMFS to focus on a comprehensive ecosystem approach to fisheries management, consistent with NOAA's regional ecosystem-based management strategy. The objectives of the FEPs will be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through the incorporation of ecosystem goals and principles in fisheries management.

The five Western Pacific FMPs, previously developed by the Council, and approved and implemented by NMFS, provide the source and structure of the regulations at title 50 of the Code of Federal Regulations, part 665 (50 CFR part 665). The FEPs establish management regimes that consider the unique ecosystems of each island group or area in the western Pacific. Accordingly, this proposed rule would restructure existing regulations for efficient use by fishermen, government agencies, and the general public. No substantive changes would be made to the regulations, but several definitions would be added to reference the FEPs, some sections would be redesignated and revised to reflect each geographic area, several errors would be corrected, and administrative titles and telephone numbers would be updated.

In 1996, NMFS consolidated six parts of the Code of Federal Regulations (CFR) into one new CFR part (50 CFR part 660) (61 FR 34570, July 2, 1996). Among other actions, that rule consolided regulations that implemented fishery conservation and management measures for fisheries operating in the exclusive economic zone (EEZ) off the west coast and in the western Pacific. The 1996 action also reorganized the rules into a more logical and cohesive order, removed duplicative and outdated provisions, and made editorial changes for readability, clarity and uniformity in the regulatory language. That final rule carried out a directive from President Clinton to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative, part of the National Performance Review, called for comprehensive regulatory reforms, and the President directed all agencies to review their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform.

Ten years later, NMFS again restructured the regulations (71 FR 17985, April 10, 2006). The measures in 50 CFR part 660 that had pertained to fisheries in the western Pacific were redesignated as a new part 665. The 2006 regulatory restructuring was consistent with NMFS' earlier establishment of the new Pacific Islands Region, which created the Pacific Islands Regional Office (PIRO) and Pacific Islands Fisheries Science Center. The new Region is responsible for administering NMFS conservation, management, and research programs in the western Pacific. Additionally, the Council at that time was in the process of creating FEPs to replace its fishery- or species-based FMPs. The 2006 rule was

a prelude to the transition to the FEP structure.

In September 2009, the Council finalized the FEPs and submitted them to NMFS for Secretarial review and approval. This proposed rule restructures the regulations to be consistent with the FEP organization, and makes the regulations easier for fishermen, managers and the general public to use.

This proposed rule would redesignate old subparts A (General) and B (Western Pacific Fisheries-General) of 50 CFR 665 as new subpart A (General). Old Subpart C (Western Pacific Pelagic Fisheries) would be redesignated as new subpart F (Western Pacific Pelagic Fisheries). Old subparts D (Western Pacific Crustacean Fisheries), E (Bottomfish and Seamount Groundfish Fisheries), F (Precious Coral Fisheries), and G (Western Pacific Coral Reef Ecosystem Fisheries) would be redesignated as B (American Samoa Fisheries), C (Hawaii Fisheries), D (Mariana Archipelago Fisheries), and E (Pacific Remote Island Area Fisheries). Each of these new geographic subparts would identify the management unit species (MUS) managed under the FEPs, as well as area restrictions within the management area. Each subpart would also be organized by fishery. For example, only those bottomfish species that are known to occur in the EEZ around American Samoa are included in the American Samoa bottomfish MUS in the section for American Samoa bottomfish fisheries.

Fishery-specific regulations would be redesignated and revised to reflect the correct cross-referenced sections and FEP naming conventions for the respective fishery sections in each of the four archipelagic ecosystem subparts. Thus, only those regulations relevant to the specific area, or general to all fisheries geographically located in the area, would be included within the subpart. Regulations for pelagic fisheries in all fishery management areas would be included in subpart F.

This proposed rule would redesignate regulations that define the fishery management process as new section 50 § 665.18, Framework Measures, in subpart A. This rule would also correct inadvertent errors in 50 CFR part 665 relating to cross-referenced section citations, and it would update several administrative names and contact information.

In a final rule published on December 12, 2008, (73 FR 75615) paragraphs (o) through (u) in old § 665.22 were redesignated as paragraphs (m) through (s) in § 665.15. That redesignation should also have included old § 665.22(n). This proposed rule corrects the error.

This proposed rule also would correct an error related to sea turtle mitigation measures. On March 28, 2000, NMFS published a final rule that implemented several measures intended to mitigate injuries to sea turtles by the Hawaii pelagic longline fishery, including requirements to carry and use line clippers, dip nets, and dehookers (65 FR 16346). In a subsequent final rule published on November 15, 2005, relating to sea turtle mitigation measures (70 FR 69282), the regulations relating to line clippers in § 665.32 were inadvertently omitted. This proposed rule would correct the error in new § 665.812.

In the definition of western Pacific pelagic management unit species, the spelling of the scientific names for the pelagic thresher shark and yellowfin tuna would be corrected, and the scientific name of the bigeye thresher shark would be revised to include the species, which was inadvertently omitted from the definition. The scientific names of a Hawaii black coral and the pelagic armorhead would also be updated.

This proposed rule would also correct current regulations to reflect that certain provisions have been superseded. In old 50 CFR 665.22 (proposed new § 668.802), paragraph (gg) prohibits Hawaii shallow-set longline fishing north of the Equator with hooks other than offset circle hooks sized 18/0 or larger with a 10 degree offset. This paragraph is superseded by paragraph (jj), which prohibits such fishing from any western Pacific longline vessel. Similarly, in old 50 CFR 665.22, paragraph (hh) prohibits Hawaii shallow-set longline fishing north of the Equator with bait other than mackerel-type bait. This provision is superseded by paragraph (kk), which prohibits such fishing from any western Pacific longline vessel. In old 50 CFR 665.22, paragraph (dd) prohibits owning or operating any western Pacific longline vessel without having on board a valid protected species workshop certificate issued by NMFS; paragraph (ll) applies that prohibition only to Hawaii longline operators, a subset of those covered in paragraph (dd). In old 50 CFR 665.22, paragraph (aa) prohibits operating a vessel under a longline limited access permit for American Samoa or Hawaii without complying with sea turtle handling requirements. This paragraph is superseded by paragraph (ii), which requires a vessel registered for use under *any* pelagic fishing permit to comply with sea turtle handling requirements. Thus, paragraphs (aa), (gg), (hh), and (ll) would be removed.

A technical clarification in old 50 CFR § 665.72(d) (proposed new § 665.211(d)) would revise the exception to the possession of Hawaii Restricted Bottomfish Species after the total allowable catch limit is reached.

This proposed rule would add or revise several definitions to be consistent with the FEPs and restructured regulations, correct errors in cross referencing, remove duplicative text, add geographic information, and correct inadvertent omissions. A technical clarification at § 665.12 would remove the definition for ''Bottomfish management area'' and ''Lobster closed area'' as these terms are artifacts from old regulations and are not currently used in part 665.

This proposed rule would remove a duplicate requirement for fishermen to complete a short-tailed albatross recovery data form. In old § 665.35(b), paragraph (8) was inadvertently duplicated by paragraph (12). This proposed rule would correct the error by removing the redundant paragraph.

This proposed rule also would revise several cross-references to 50 CFR part 665 found in 50 CFR part 404 regarding the Northwestern Hawaiian Islands Marine National Monument.

In a previous regulatory restructuring (71 FR 17985, April 10, 2006), the regulations were redesignated section-by-section from old 50 CFR part 660 to new 50 CFR part 665. In the resulting regulations, artifact cross-references to part 660 remain, and these would be corrected in this proposed rule. Also, in § 665.1(c), the cross-reference to 50 CFR part 600 subpart N was inadvertently changed to incorrectly reference 50 CFR part 665. This error would also be corrected.

The following table lists the distribution of the subparts and sections in 50 CFR part 665 proposed in these revisions:

Old section	New section
Subpart A—General.	Subpart A—General.
§ 665.1 Purpose and scope.	§ 665.1 Purpose and scope.
§ 665.2 Relation to other laws.	§ 665.2 Relation to other laws.
§ 665.3 Reporting and recordkeeping.	§ 665.14 Reporting and recordkeeping.
§ 665.4 Licensing and registration.	§ 665.3 Licensing and registration.
Subpart B—Western Pacific Fisheries—General.	Subpart B—American Samoa Fisheries.
§ 665.11 Purpose and scope.	§ 665.1 Purpose and scope.
§ 665.12 Definitions	§ 665.12 Definitions.

Old section	New section
	§ 665.101 Definitions. (American Samoa).
	§ 665.121 Definitions. (American Samoa).
	§ 665.141 Definitions. (American Samoa).
	§ 665.161 Definitions. (American Samoa).
	§ 665.201 Definitions. (Hawaii).
	§ 665.221 Definitions. (Hawaii).
	§ 665.241 Definitions. (Hawaii).
	§ 665.261 Definitions. (Hawaii).
	§ 665.401 Definitions. (Marianas).
	§ 665.421 Definitions. (Marianas).
	§ 665.441 Definitions. (Marianas).
	§ 665.461 Definitions. (Marianas).
	§ 665.601 Definitions. (PRIA).
	§ 665.621 Definitions. (PRIA).
	§ 665.641 Definitions. (PRIA).
	§ 665.661 Definitions. (PRIA).
	§ 665.800 Definitions. (Western Pacific Pelagic).
§ 665.13 Permits and fees.	§ 665.13 Permits and fees.
§ 665.14 Reporting and recordkeeping.	§ 665.14 Reporting and recordkeeping.
§ 665.15 Prohibitions.	§ 665.15 Prohibitions.
§ 665.16 Vessel identification.	§ 665.16 Vessel identification.
§ 665.17 Experimental fishing.	§ 665.17 Experimental fishing.
§ 665.18 Area restrictions.	§ 665.99 Area restrictions. (American Samoa).
	§ 665.199 Area restrictions. (Hawaii).
	§ 665.399 Area restrictions. (Marianas).
	§ 665.599 Area Restrictions. (PRIA).
§ 665.19 Vessel monitoring system.	§ 665.19 Vessel monitoring system.
Subpart C—Western Pacific Pelagic Fisheries.	Subpart C—Hawaii Fisheries.
§ 665.21 Permits	§ 665.801 Permits.
§ 665.22 Prohibitions.	§ 665.802 Prohibitions.
§ 665.23 Notifications.	§ 665.803 Notifications.
§ 665.24 Gear identification.	§ 665.804 Gear identification.
§ 665.26 Longline fishing prohibited area management.	§ 665.806 Longline fishing prohibited area management.
§ 665.27 Exemptions for longline fishing prohibited areas; procedures.	§ 665.807 Exemptions for longline fishing prohibited areas; procedures.
§ 665.28 Conditions for at-sea observer coverage.	§ 665.808 Conditions for at-sea observer coverage.
§ 665.29 Port privileges and transiting for unpermitted U.S. longline vessels.	§ 665.809 Port privileges and transiting for unpermitted U.S. longline vessels.
§ 665.30 Prohibition of drift gillnetting.	§ 665.810 Prohibition of drift gillnetting.
§ 665.31 Framework adjustments to management measures.	§ 665.18 Framework adjustments to management measures.
§ 665.32 Sea turtle take mitigation measures.	§ 665.812 Sea turtle take mitigation measures.
§ 665.33 Western Pacific longline fishing restrictions.	§ 665.813 Western Pacific longline fishing restrictions.
§ 665.34 Protected species workshop.	§ 665.814 Protected species workshop.
§ 665.35 Pelagic longline seabird mitigation measures.	§ 665.815 Pelagic longline seabird mitigation measures.
§ 665.36 American Samoa longline limited entry program.	§ 665.816 American Samoa longline limited entry program.
§ 665.37 American Samoa pelagic fishery area management.	§ 665.817 American Samoa pelagic fishery area management.
§ 665.38 Exemptions for American Samoa large vessel prohibited areas.	§ 665.818 Exemptions for American Samoa large vessel prohibited areas.
Subpart D—Western Pacific Crustacean Fisheries.	Subpart D—Mariana Archipelago Fisheries.
§ 665.41 Permits	§ 665.142 Permits. (American Samoa).
	§ 665.242 Permits. (Hawaii).
	§ 665.442 Permits. (Marianas).
	§ 665.642 Permits. (PRIA).
§ 665.42 Prohibitions.	§ 665.143 Prohibitions. (American Samoa).
	§ 665.243 Prohibitions. (Hawaii).
	§ 665.443 Prohibitions. (Marianas).
	§ 665.643 Prohibitions. (PRIA).
§ 665.43 Notifications.	§ 665.144 Notifications. (American Samoa).
	§ 665.244 Notifications. (Hawaii).
	§ 665.444 Notifications. (Marianas).
	§ 665.644 Notifications. (PRIA).
§ 665.44 Lobster size and condition restrictions—Permit Area 2.	§ 665.249 Lobster size and condition restrictions—Permit Area 2.
§ 665.45 Closed seasons.	§ 665.250 Closed seasons.
§ 665.46 Closed areas.	§ 665.251 Closed areas.
§ 665.47 Gear identification.	§ 665.246 Gear identification.
§ 665.48 Gear restrictions.	§ 665.245 Gear restrictions.
§ 665.49 At-sea observer coverage.	§ 665.145 At-sea observer coverage. (American Samoa).
	§ 665.247 At-sea observer coverage. (Hawaii).
	§ 665.445 At-sea observer coverage. (Marianas).
	§ 665.645 At-sea observer coverage. (PRIA).
§ 665.50 Harvest limitation program.	§ 665.252 Harvest limitation program.
§ 665.51 Monk seal protective measures.	§ 665.248 Monk seal protective measures.
§ 665.52 Monk seal emergency protective measures.	
§ 665.53 Framework procedures.	§ 665.18 Framework adjustments to management measures.
§ 665.54 Five-year review.	
Subpart E—Bottomfish and Seamount Groundfish Fisheries.	Subpart E—Pacific Remote Island Area Fisheries.
§ 665.61 Permits	§ 665.203 Permits. (Hawaii).
	§ 665.404 Permits. (Marianas).
	§ 665.603 Permits. (PRIA).
§ 665.62 Prohibitions.	§ 665.103 Prohibitions. (American Samoa).
	§ 665.204 Prohibitions. (Hawaii).
	§ 665.405 Prohibitions. (Marianas).
	§ 665.604 Prohibitions. (PRIA).
§ 665.63 Notification	§ 665.205 Notification. (Hawaii).
§ 665.64 Gear restrictions.	§ 665.104 Gear restrictions. (American Samoa).
	§ 665.206 Gear Restrictions. (Hawaii).
	§ 665.406 Gear restrictions. (Marianas).
	§ 665.605 Gear restrictions. (PRIA).
§ 665.65 At-sea observer coverage.	§ 665.105 At-sea observer coverage. (American Samoa).

Old section	New section
	§ 665.207 At-sea observer coverage. (Hawaii).
	§ 665.407 At-sea observer coverage. (Marianas).
	§ 665.606 At-sea observer coverage. (PRIA).
§ 665.66 Protected species conservation.	§ 665.208 Protected species conservation.
§ 665.67 Framework for regulatory adjustments.	§ 665.18 Framework adjustments to management measures.
§ 665.68 Fishing moratorium on Hancock Seamount.	§ 665.209 Fishing moratorium on Hancock Seamount.
§ 665.69 Management subareas.	§ 665.98 Management area. (American Samoa).
	§ 665.198 Management areas. (Hawaii).
	§ 665.202 Management subareas. (Hawaii).
	§ 665.398 Management areas. (Marianas).
	§ 665.402 Management subareas. (Marianas).
	§ 665.598 Management area. (PRIA).
§ 665.70 Bottomfish fishery area management.	§ 665.403 Bottomfish fishery area management.
§ 665.71 Hawaii restricted bottomfish species.	§ 665.210 Hawaii restricted bottomfish species.
§ 665.72 Total Allowable Catch (TAC) limit.	§ 665.211 Total Allowable Catch (TAC) limit.
§ 665.73 Non-commercial bag limits.	§ 665.212 Non-commercial bag limits.
Subpart F—Precious Corals Fisheries.	Subpart F—Western Pacific Pelagic Fisheries.
§ 665.81 Permits	§ 665.162 Permits. (American Samoa).
	§ 665.262 Permits. (Hawaii).
	§ 665.462 Permits. (Marianas).
	§ 665.662 Permits. (PRIA).
§ 665.82 Prohibitions.	§ 665.163 Prohibitions. (American Samoa).
	§ 665.263 Prohibitions. (Hawaii).
	§ 665.463 Prohibitions. (Marianas).
	§ 665.663 Prohibitions. (PRIA).
§ 665.83 Seasons ...	§ 665.168 Seasons. (American Samoa).
	§ 665.267 Seasons. (Hawaii).
	§ 665.468 Seasons. (Marianas).
	§ 665.668 Seasons. (PRIA).
§ 665.84 Quotas	§ 665.167 Quotas. (American Samoa).
	§ 665.269 Quotas. (Hawaii).
	§ 665.467 Quotas. (Marianas).
	§ 665.667 Quotas. (PRIA).
§ 665.85 Closures ...	§ 665.166 Closures. (American Samoa).
	§ 665.268 Closures. (Hawaii).
	§ 665.466 Closures. (Marianas).
	§ 665.666 Closures. (PRIA).
§ 665.86 Size restrictions.	§ 665.165 Size restrictions. (American Samoa).
	§ 665.265 Size restrictions. (Hawaii).
	§ 665.465 Size restrictions. (Marianas).
	§ 665.665 Size restrictions. (PRIA).
§ 665.87 Area restrictions.	§ 665.266 Area restrictions. (Hawaii).
§ 665.88 Gear restrictions.	§ 665.164 Gear restrictions. (American Samoa).
	§ 665.264 Gear restrictions. (Hawaii).
	§ 665.464 Gear restrictions. (Marianas).
	§ 665.664 Gear restrictions. (PRIA).
§ 665.89 Framework procedures.	§ 665.18 Framework adjustments to management measures.
§ 665.90 Gold coral harvest moratorium.	§ 665.169 Gold coral harvest moratorium. (American Samoa).
	§ 665.270 Gold coral harvest moratorium. (Hawaii).
	§ 665.469 Gold coral harvest moratorium. (Marianas).
	§ 665.669 Gold coral harvest moratorium. (PRIA).
Subpart G—Western Pacific Coral Reef Ecosystem Fisheries.	None.
§ 665.601 Relation to other laws.	§ 665.123 Relation to other laws. (American Samoa).
	§ 665.223 Relation to other laws. (Hawaii).
	§ 665.423 Relation to other laws. (Marianas).
	§ 665.623 Relation to other laws. (PRIA).
§ 665.602 Permits and fees.	§ 665.124 Permits and Fees. (American Samoa).
	§ 665.224 Permits and Fees. (Hawaii).
	§ 665.424 Permits and Fees. (Marianas).
	§ 665.624 Permits and Fees. (PRIA).
§ 665.603 Prohibitions.	§ 665.125 Prohibitions. (American Samoa).
	§ 665.225 Prohibitions. (Hawaii).
	§ 665.425 Prohibitions. (Marianas).
	§ 665.625 Prohibitions. (PRIA).
§ 665.604 Notifications.	§ 665.126 Notifications. (American Samoa).
	§ 665.226 Notifications. (Hawaii).
	§ 665.426 Notifications. (Marianas).
	§ 665.626 Notifications. (PRIA).
§ 665.605 Allowable gear and gear restrictions.	§ 665.127 Allowable gear and gear restrictions. (American Samoa).
	§ 665.227 Allowable gear and gear restrictions. (Hawaii).
	§ 665.427 Allowable gear and gear restrictions. (Marianas).
	§ 665.627 Allowable gear and gear restrictions. (PRIA).
§ 665.606 Gear identification.	§ 665.128 Gear identification. (American Samoa).
	§ 665.228 Gear identification. (Hawaii).
	§ 665.428 Gear identification. (Marianas).
	§ 665.628 Gear identification. (PRIA).
§ 665.607 Framework for regulatory adjustments.	§ 665.18 Framework for regulatory adjustments.
§ 665.608 Regulatory area.	§ 665.98 Management area. (American Samoa).
	§ 665.222 Management area. (Hawaii).
	§ 665.422 Management area. (Marianas).
	§ 665.598 Management area. (PRIA).
§ 665.609 Annual reports.	§ 665.18 Framework for regulatory adjustments.

Old section	New section
Table 1 to Part 665—Quotas for Precious Corals Permit Areas.	§ 665.167 Quotas. (American Samoa).
	§ 665.269 Quotas. (Hawaii).
	§ 665.467 Quotas. (Marianas).
	§ 665.667 Quotas. (PRIA).
Table 2 to Part 665—Currently Harvested Coral Reef Taxa.	§ 665.121 Definitions. (American Samoa).
	§ 665.221 Definitions. (Hawaii).
	§ 665.421 Definitions. (Marianas).
	§ 665.621 Definitions. (PRIA).
Table 3 to Part 665—Potentially Harvested Coral Reef Taxa.	§ 665.121 Definitions. (American Samoa).
	§ 665.221 Definitions. (Hawaii).
	§ 665.421 Definitions. (Marianas).
	§ 665.621 Definitions. (PRIA).
Figure 1 to Part 665—Carapace Length of Lobsters.	Figure 1 to Part 665—Carapace Length of Lobsters.
Figure 2 to Part 665—Length of Fishing Vessel.	Figure 2 to Part 665—Length of Fishing Vessel.
None	Figure 3 to Part 665—Sample Fabricated Arceneaux Line Clipper.

Old section	New section
None	§ 665.100 American Samoa Bottomfish and Seamount Groundfish Fisheries.
	§ 665.120 American Samoa Coral Reef Ecosystem Fisheries.
	§ 665.140 American Samoa Crustacean Fisheries.
	§ 665.160 American Samoa Precious Coral Fisheries.
None	§ 665.200 Hawaii Bottomfish and Seamount Groundfish Fisheries.
	§ 665.220 Hawaii Coral Reef Ecosystem Fisheries.
	§ 665.240 Hawaii Crustacean Fisheries.
	§ 665.260 Hawaii Precious Coral Fisheries.
None	§ 665.400 Mariana Bottomfish and Seamount Groundfish Fisheries.
	§ 665.420 Mariana Coral Reef Ecosystem Fisheries.
	§ 665.440 Mariana Crustacean Fisheries.
	§ 665.460 Mariana Precious Coral Fisheries.

Old section	New section
None	§ 665.600 PRIA Bottomfish and Seamount Groundfish Fisheries.
	§ 665.620 PRIA Coral Reef Ecosystem Fisheries.
	§ 665.640 PRIA Crustacean Fisheries.
	§ 665.660 PRIA Precious Coral Fisheries.
None	§ 665.798 Management Area (Western Pacific Pelagic).

Revisions to Paperwork Reduction Act (PRA) References

Section 3507 of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection, and 15 CFR § 902.1(b) identifies the location of NOAA regulations for which OMB approvals have been issued. Because this proposed rule would codify recordkeeping and reporting requirements, 15 CFR § 902.1(b) would be revised to correctly reference the new sections resulting from the reorganization.

The following table lists the derivation of the NOAA PRA approvals for regulatory requirements in 50 CFR part 665:

Old section	New section	OMB control No.
§ 665.13 Permits and fees	§ 665.13 Permits and fees	0648–0463, –0490, –0577, –0584, –0586, and –0589.
§ 665.14 Reporting and recordkeeping	§ 665.14 Reporting and recordkeeping	0648–0214, –0462, –0577, –0584, –0586, and –0589.
§ 665.16 Vessel identification	§ 665.16 Vessel identification	0648–0361, –0584, –0586, and –0589.
§ 665.17 Experimental fishing	§ 665.17 Experimental fishing	0648–0214 and –0490.
§ 665.19 Vessel monitoring system	§ 665.19 Vessel monitoring system	0648–0441, –0519, and –0584.
§ 665.21(l) Permits; Hawaii longline limited access permit.	§ 665.801 Permits	0648–0490.
§ 665.21(g) Permits; squid jig	§ 665.801(g)	0648–0589.
§ 665.23 Notifications	§ 665.803 Notifications	0648–0214.
§ 665.24 Gear identification	§ 665.804 Gear identification	0648–0360.
§ 665.27 Exemptions for longline fishing prohibited areas; procedures.	§ 665.807 Exemptions for longline fishing prohibited areas; procedures.	0648–0490.
§ 665.28 Conditions for at-sea observer coverage.	§ 665.808 Conditions for at-sea observer coverage.	0648–0214.
§ 665.35 Pelagic longline seabird mitigation measures.	§ 665.815 Pelagic longline seabird mitigation measures.	0648–0456.
§ 665.41 Permits	§ 665.142 Permits	0648–0490 and –0586.
	§ 665.242 Permits.	
	§ 665.442 Permits.	
	§ 665.642 Permits.	
§ 665.43 Notifications	§ 665.144 Notifications	0648–0214.
	§ 665.244 Notifications.	
	§ 665.444 Notifications.	
	§ 665.644 Notifications.	
§ 665.47 Gear indentification	§ 665.246 Gear indentification	0648–0360.
§ 665.49 At-sea observer coverage	§ 665.145 At-sea observer coverage	0648–0214.
	§ 665.247 At-sea observer coverage.	
	§ 665.445 At-sea observer coverage.	

Old section	New section	OMB control No.
	§ 665.645 At-sea observer coverage.	
§ 665.61 Permits	§ 665.203 Permits	0648–0490 and –0584.
	§ 665.404 Permits.	
	§ 665.603 Permits.	
§ 665.63 Notification	§ 665.205 Notification	0648–0214.
§ 665.65 At-sea observer coverage	§ 665.105 At-sea observer coverage	0648–0214.
	§ 665.207 At-sea observer coverage.	
	§ 665.407 At-sea observer coverage.	
	§ 665.606 At-sea observer coverage.	
§ 665.81 Permits	§ 665.162 Permits	0648–0490
	§ 665.262 Permits.	
	§ 665.462 Permits.	
	§ 665.662 Permits.	
§ 665.602 Permits and Fees	§ 665.124 Permits and Fees	0648–0463.
	§ 665.224 Permits and Fees.	
	§ 665.424 Permits and Fees.	
	§ 665.624 Permits and Fees.	
§ 665.604 Notifications	§ 665.126 Notifications	0648–0462.
	§ 665.226 Notifications.	
	§ 665.426 Notifications.	
§ 665.606 Gear identification	§ 665.128 Gear identification	0648–0360.
	§ 665.228 Gear identification.	
	§ 665.428 Gear identification.	
	§ 665.628 Gear identification.	

To be considered, comments on this proposed rule must be received by NMFS by December 4, 2009, not postmarked or otherwise transmitted by that date. Late comments may not be considered. In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on the five new FEPs through December 1, 2009, as stated in the Notice of Availability published on October 2, 2009 (74 FR 50944). If they are received by December 1, 2009, public comments on this proposed rule will also be considered in the approval/disapproval decision for the FEPs. Comments received after that date may not be considered in the approval/disapproval decision for the FEPs, but will be considered for this proposed rule.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the new FEPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

A PEIS was prepared for the FEPs, and a Notice of Availability of the draft PEIS was published on April 13, 2007 (72 FR 18644). The PEIS discusses impacts on target and non-target fish stocks, including bottomfish, precious corals, coral reef ecosystem species, and crustaceans; Essential Fish Habitat and Habitat Areas of Particular Concern; protected species; fishery participants and communities; and administration and enforcement. All of the current fisheries in the Western Pacific Region that are covered by the management measures of the FEPs have been reviewed for compliance with applicable laws. None of the actions considered would result in irreversible or irretrievable commitments of resources and none would result in significant or unavoidable adverse impacts.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

The Western Pacific Fishery Management Council prepared five fishery ecosystem plans (FEPs) to incorporate and reorganize elements of the five existing species-based fishery management plans. The FEPs would cover archipelagos or other broad geographic areas, including American Samoa, the Mariana Islands (comprising Guam and the Northern Mariana Islands), Hawaii, the Pacific remote island areas, and one FEP would manage western Pacific pelagic fisheries. This rule restructures codified language that would change the fisheries from species-based to area-based, but would not change the current management regimes or affect regulations that are presently in place. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This rule does not duplicate, overlap, or conflict with other Federal rules. All fishing vessels having the potential to participate in western Pacific fisheries are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of $ 4.0 million). There are no additional small entities that could be affected by this rulemaking.

This rule does not affect the profitability of fishing firms under Federal management. Therefore, there are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. For these reasons, NMFS has determined that this proposed rule will not have a significant impact on a substantial number of small entities.

Any forthcoming additions or alterations to the reorganized regulations after the implementation of this rule would require a complete regulatory flexibility act analysis and analysis of significance under E.O. 12866.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to the PRA that have been approved by OMB, as follows:

1. Approved under 0648–0214, 0648–0577, 0648–0584, 0648–0586, and 0649–0589. (a) Pacific Islands Region (PIR) logbook family of forms estimated at 5 minutes (min) per reporting action; (b) pre-trip and post-landing notifications estimated at 5 min per reporting action; (c) experimental fishing reports estimated at 4 hours (hr) per reporting action; (d) sales and transshipment reports estimated at 5 min per reporting

action; (e) report on gear left at sea estimated at 5 min per reporting action; (f) claims for reimbursement for lost fishing time estimated at 4 hr per claim; (g) request for pelagics area closure exemption estimated at 1 hr per request; and (h) observer placement meetings estimated at 1 hr per reporting action. (§§ 665.14, 665.17, 665.105, 665.144, 665.145, 665.205, 665.207, 665.244, 665.247, 665.407, 665.444, 665.445, 665.606, 665.644, 665.645, 665.803, and 665.808.)

2. Approved under 0648–0360, 0648–0361, 0648–0584, 0648–0586 and 0648–0589. PIR gear and vessel and identification estimated at 45 min to 1 hr 15 min per vessel for vessel identification and 2 min for each gear marking. (§§ 665.16, 665.128, 665.228, 665.246, 665.428, 665.628, and 665.804.)

3. Approved under 0648–0441, 0648–0519, and 0648–0584. PIR vessel monitoring system (a) installation, estimated at 4 hr per reporting action; (b) repair and maintenance, estimated at 2 hr per reporting action; and (c) hourly automated position reports, estimated at 24 sec per day. (§ 665.19.)

4. Approved under 0648–0456. PIR seabird interaction reporting (a) at-sea notification, estimated at 1 hr per reporting action; (b) reporting on recovery data form, estimated at 1 hr per reporting action; and (c) specimen tagging, estimated at 0.5 hr per reporting action. (§ 665.815.)

5. Approved under 0648–0462. PIR coral reef logbook reporting (a) at-sea notification, estimated at 3 min per reporting action; (b) logbook reporting, estimated at 0.5 hr per reporting action; and (c) transshipment reports, estimated at 15 min per reporting action. (§§ 665.14, 665.126, 665.226, and 665.426.)

6. Approved under 0648–0463. PIR coral reef special permit (a) application, estimated at 2 hr per application; and (b) special permit appeals, estimated at 3 hr per appeal. (§§ 665.124, 665.224, 665.424, and 665.624.)

7. Approved under 0648–0490, 0648–0577, 0648–0584, 0648–0586, and 0649–0589: (a) PIR permit family of forms estimated at 0.5 hr per permit action; (b) experimental fishing permits, estimated at 2 hr per application; and (c) appeals from permit actions estimated at 2 hr per permit appeal. (§§ 665.13, 665.17, 665.142, 665.162, 665.203, 665.242, 665.262, 665.404, 665.442, 665.462, 665.603, 665.642, 665.662, 665.801, and 665.807.)

Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson (see **ADDRESSES**), and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 223

Exports, Imports, Marine mammals, Transportation.

50 CFR Part 404

Northwestern Hawaiian Islands Marine National Monument.

50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: October 29, 2009.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 15 CFR chapter IX, 50 CFR chapter II, 50 CFR chapter IV, and 50 CFR chapter VI are proposed to be amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for Part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Amend the table in § 902.1(b) by:

a. Removing the entries and corresponding OMB numbers under 50 CFR for §§ 665.21(k), 665.23, 665.24, 665.27, 665.28, 665.35, 665.41, 665.43, and 665.48, 665.61, 665.63, 665.65, 665.81, 665.602, 665.604, and 665.606.

b. Amending the table in § 902.1(b) by revising the entries for §§ 665.13, 665.14, 665.16, 665.17, and 665.19, and

c. Adding new entries and corresponding OMB numbers under 50 CFR for §§ 665.105 through 665.815.

The revisions and additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
665.13	0463, 0490, 0577, 0584, 0586, and 0589.
665.14	0214, 0462, 0577, 0584, 0586, and 0589.
665.16	0361, 0584, 0586, and 0589.
665.17	0214 and 0490.
665.19	0441, 0519, and 0584.
665.105	0214.
665.124	0463.
665.126	0462.
665.128	0360.
665.142	0490 and 0586.
665.144	0214.
665.145	0214.
665.162	0490.
665.203	0490 and 0577.
665.205	0214.
665.207	0214.
665.224	0463.
665.226	0462.
665.228	0360.
665.242	0490 and 0586.
665.244	0214.
665.246	0360.
665.247	0214.
665.262	0490.
665.404	0490 and 0584.
665.407	0214.
665.424	0463.
665.426	0462.
665.428	0360.
665.442	0490 and 0586.
665.444	0214.
665.445	0214.
665.462	0490.
665.603	0490.
665.606	0214.
665.624	0463.
665.628	0360.
665.642	0490 and 0586.
665.644	0214.
665.445	0214.
665.662	0490.
665.801	0490 and 0589.
665.803	0214.
665.804	0360.
665.807	0490.
665.808	0214.
665.815	0456.
* * * * *	

50 CFR Chapter II

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

4. The authority citation for 50 CFR part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 *et seq.*

5. In § 223.206, revise paragraph (d)(9) to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(9) Restrictions applicable to Pacific pelagic longline vessels. In addition to the general prohibitions specified in § 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 665.801 to do any of the following on the high seas of the Pacific Ocean east of 150° W. long. and north of the Equator (0° N. lat.):

* * * * *

50 CFR Chapter IV

PART 404—NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

6. The authority citation for 50 CFR Part 404 continues to read as follows:

Authority: 16 U.S.C. 431 *et seq.*; 16 U.S.C. 460k–3; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 742f; 16 U.S.C. 742l; 16 U.S.C. 668 dd–ee; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1531 *et seq.*; Pub. L. 106–513, § 6(g) (2000).

7. In § 404.3, revise the definitions of ''Bottomfish species'' and ''Pelagic species'' to read as follows:

§ 404.3 Definitions.

* * * * *

Bottomfish species means Hawaii bottomfish management unit species as defined at 50 CFR 665.201.

* * * * *

Pelagic species means western Pacific pelagic management unit species as defined at 50 CFR 665.800.

* * * * *

8. In § 404.10, revise paragraph (b)(1)(ii) to read as follows:

§ 404.10 Commercial fishing.

* * * * *

(b) * * *

(1) * * *

(ii) Such permit was in effect on June 15, 2006, and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 665, as necessary.

* * * * *

50 CFR Chapter VI

PART 665—FISHERIES IN THE WESTERN PACIFIC

9. The authority citation for 50 CFR part 665 continues to read as follows:

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

10. Revise part 665 to read as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

Subpart A—General

Sec.

665.1 Purpose and scope.
665.2 Relation to other laws.
665.3 Licensing and registration.
665.4–665.11 [Reserved]
665.12 Definitions.
665.13 Permits and fees.
665.14 Reporting and recordkeeping.
665.15 Prohibitions.
665.16 Vessel identification.
665.17 Experimental fishing.
665.18 Framework adjustments to management measures.
665.19 Vessel monitoring system.

Subpart B—American Samoa Fisheries

665.98 Management area.
665.99 Area restrictions.
665.100 American Samoa bottomfish fisheries [Reserved].
665.101 Definitions.
665.102 [Reserved]
665.103 Prohibitions.
665.104 Gear restrictions.
665.105 At-sea observer coverage.
665.106–665.119 [Reserved]
665.120 American Samoa coral reef ecosystem fisheries [Reserved].
665.121 Definitions.
665.122 [Reserved]
665.123 Relation to other laws.
665.124 Permits and fees.
665.125 Prohibitions.
665.126 Notifications.
665.127 Allowable gear and gear restrictions.
665.128 Gear identification.
665.129–665.139 [Reserved]
665.140 American Samoa crustacean fisheries [Reserved].
665.141 Definitions.
665.142 Permits.
665.143 Prohibitions.
665.144 Notifications.
665.145 At-sea observer coverage.
665.146–665.159 [Reserved]
665.160 American Samoa precious coral fisheries [Reserved].
665.161 Definitions.
665.162 Permits.
665.163 Prohibitions.
665.164 Gear restrictions.
665.165 Size restrictions.
665.166 Closures.
665.167 Quotas.
665.168 Seasons.
665.169 Gold coral harvest moratorium.

Subpart C—Hawaii Fisheries

665.198 Management areas.
665.199 Area restrictions [Reserved].
665.200 Hawaii bottomfish and seamount groundfish fisheries [Reserved].
665.201 Definitions.
665.202 Management subareas.
665.203 Permits.
665.204 Prohibitions.
665.205 Notification.
665.206 Gear restrictions.
665.207 At-sea observer coverage.
665.208 Protected species conservation.
665.209 Fishing moratorium on Hancock Seamount.
665.210 Hawaii restricted bottomfish species.
665.211 Total Allowable Catch (TAC) limit.
665.212 Non-commercial bag limits.
665.213–665.219 [Reserved]
665.220 Hawaii coral reef ecosystem fisheries [Reserved].
665.221 Definitions.
665.222 Management area.
665.223 Relation to other laws.
665.224 Permits and fees.
665.225 Prohibitions.
665.226 Notifications.
665.227 Allowable gear and gear restrictions.
665.228 Gear identification.
665.229–665.239 [Reserved]
665.240 Hawaii crustacean fisheries [Reserved].
665.241 Definitions.
665.242 Permits.
665.243 Prohibitions.
665.244 Notifications.
665.245 Gear restrictions.
665.246 Gear identification.
665.247 At-sea observer coverage.
665.248 Monk seal protective measures.
665.249 Lobster size and condition restrictions in Permit Area 2.
665.250 Closed seasons.
665.251 Closed areas.
665.252 Harvest limitation program.
665.253–665.259 [Reserved]
665.260 Hawaii precious coral fisheries [Reserved].
665.261 Definitions.
665.262 Permits.
665.263 Prohibitions.
665.264 Gear restrictions.
665.265 Size restrictions.
665.266 Area restrictions.
665.267 Seasons.
665.268 Closures.
665.269 Quotas.
665.270 Gold coral harvest moratorium.

Subpart D—Mariana Archipelago Fisheries

665.398 Management areas.
665.399 Area restrictions.
665.400 Mariana bottomfish fisheries [Reserved].
665.401 Definitions.
665.402 Management subareas.
665.403 Bottomfish fishery area management.
665.404 Permits.
665.405 Prohibitions.
665.406 Gear restrictions.
665.407 At-sea observer coverage.
665.418–665.419 [Reserved]
665.420 Mariana coral reef ecosystem fisheries [Reserved].
665.421 Definitions.
665.422 Management area.
665.423 Relation to other laws.
665.424 Permits and fees.
665.425 Prohibitions.
665.426 Notifications.
665.427 Allowable gear and gear restrictions.
665.428 Gear identification.
665.429–665.439 [Reserved]
665.440 Mariana crustacean fisheries [Reserved].
665.441 Definitions.
665.442 Permits.

665.443 Prohibitions.
665.444 Notifications.
665.445 At-sea observer coverage.
665.446–665.459 [Reserved]
665.460 Mariana precious coral fisheries [Reserved].
665.461 Definitions.
665.462 Permits.
665.463 Prohibitions.
665.464 Gear restrictions.
665.465 Size restrictions.
665.466 Closures.
665.467 Quotas.
665.468 Seasons.
665.469 Gold coral harvest moratorium.

Subpart E—Pacific Remote Island Area Fisheries

665.598 Management area.
665.599 Area Restrictions.
665.600 PRIA bottomfish fisheries [Reserved].
665.601 Definitions.
665.602 [Reserved]
665.603 Permits.
665.604 Prohibitions.
665.605 Gear restrictions.
665.606 At-sea observer coverage.
665.607–665.619 [Reserved]
665.620 PRIA coral reef ecosystem fisheries [Reserved].
665.621 Definitions.
665.622 [Reserved]
665.623 Relation to other laws.
665.624 Permits and fees.
665.625 Prohibitions.
665.626 Notifications.
665.627 Allowable gear and gear restrictions.
665.628 Gear identification.
665.629–665.639 [Reserved]
665.640 PRIA crustacean fisheries.
665.641 Definitions.
665.642 Permits.
665.643 Prohibitions.
665.644 Notifications.
665.645 At-sea observer coverage.
665.646–665.659 [Reserved]
665.660 PRIA precious coral fisheries [Reserved].
665.661 Definitions.
665.662 Permits.
665.663 Prohibitions.
665.664 Gear restrictions.
665.665 Size restrictions.
665.666 Closures.
665.667 Quotas.
665.668 Seasons.
665.669 Gold coral harvest moratorium.

Subpart F—Western Pacific Pelagic Fisheries

665.798 Management area.
665.799 Area restrictions.
665.800 Definitions.
665.801 Permits.
665.802 Prohibitions.
665.803 Notifications.
665.804 Gear identification.
665.805 [Reserved]
665.806 Longline fishing prohibited area management.
665.807 Exemptions for longline fishing prohibited areas; procedures.
665.808 Conditions for at-sea observer coverage.
665.809 Port privileges and transiting for unpermitted U.S. longline vessels.
665.810 Prohibition of drift gillnetting.
665.811 [Reserved]
665.812 Sea turtle take mitigation measures.
665.813 Western Pacific longline fishing restrictions.
665.814 Protected species workshop.
665.815 Pelagic longline seabird mitigation measures.
665.816 American Samoa longline limited entry program.
665.817 American Samoa pelagic fishery area management.
665.818 Exemptions for American Samoa large vessel prohibited areas.
FIGURE 1 TO PART 665. CARAPACE LENGTH OF LOBSTERS
FIGURE 2 TO PART 665. LENGTH OF FISHING VESSELS
FIGURE 3 TO PART 665. SAMPLE FABRICATED ARCENEAUX LINE CLIPPER

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

Subpart A—General

§ 665.1 Purpose and scope.

(a) The regulations in this part govern fishing for western Pacific fishery ecosystem management unit species by vessels of the United States that operate or are based inside the outer boundary of the U.S. EEZ around American Samoa, Hawaii, Guam, the Northern Mariana Islands, Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in 50 CFR part 600.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found in 50 CFR part 600, subpart N.

(d) This subpart contains regulations that are common to all western Pacific fisheries managed under Fishery Ecosystem Plans (FEPs) prepared by the Western Pacific Fishery Management Council under the Magnuson-Stevens Act.

(e) Regulations specific to individual areas and fisheries are included in subparts B through F of this part.

(f) Nothing in subparts B through F of this part is intended to supersede any valid State or Federal regulations that are more restrictive than those published here.

§ 665.2 Relation to other laws.

NMFS recognizes that any State law pertaining to vessels registered under the laws of that State while operating in the fisheries regulated under this part, that is consistent with this part and the FEPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 665.3 Licensing and registration.

Any person who is required to do so by applicable State law or regulation must comply with licensing and registration requirements in the exact manner required by applicable State law or regulation.

§§ 665.4—665.11 [Reserved]

§ 665.12 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, § 600.10 of this chapter, and subparts B through F of this part, general definitions for western Pacific fisheries have the following meanings:

American Samoa FEP means the Fishery Ecosystem Plan for American Samoa.

Bottomfish FMP means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region established in 1986 and replaced by FEPs.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1 to this part).

Circle hook means a fishing hook with the point turned perpendicularly back towards the shank.

Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade. All lobster fishing in Crustacean Permit Area 1 is considered commercial fishing.

Commonwealth of the Northern Mariana Islands (CNMI) means the Northern Mariana Islands.

Coral Reef Ecosystems FMP means the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region established in 2004 and replaced by FEPs.

Council means the Western Pacific Fishery Management Council.

Crustacean receiving vessel means a vessel of the United States to which lobsters taken in a crustacean management area are transferred from another vessel.

Crustaceans FMP means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region established in 1982 and replaced by FEPs.

Currently harvested coral reef taxa (CHCRT) means coral reef associated species, families, or subfamilies, as defined in §§ 665.121, 665.221, 665.421, and 665.621, that have annual landings

greater than 454.54 kg (1,000 lb) as reported on individual State, commonwealth, or territory catch reports or through creel surveys. Fisheries and research data from many of these species have been analyzed by regional management agencies.

Dead coral means any precious coral that no longer has any live coral polyps or tissue.

EFP means an experimental fishing permit.

First level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit or is otherwise regulated under crustacean fisheries in subparts B through E of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

Fishing gear, as used in regulations for the American Samoa, CNMI, Hawaii, and PRIA bottomfish fisheries in subparts B through E of this part, includes:

(1) *Bottom trawl,* which means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed;

(2) *Gillnet,* (see § 600.10);

(3) *Hook-and-line,* which means one or more hooks attached to one or more lines;

(4) *Set net,* which means a stationary, buoyed, and anchored gill net; and

(5) *Trawl,* (see § 600.10).

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31, with the exception of fishing for Hawaii Restricted Bottomfish Species and any precious coral management unit species.

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.

Harvest guideline means a specified numerical harvest objective.

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

Hawaii FEP means the Fishery Ecosystem Plan for the Hawaiian Archipelago.

Hookah breather means a tethered underwater breathing device that pumps air from the surface through one or more hoses to divers at depth.

Incidental catch or incidental species means species caught while fishing for the primary purpose of catching a different species.

Land or landing means offloading fish from a fishing vessel, arriving in port to begin offloading fish, or causing fish to be offloaded from a fishing vessel.

Large vessel means, as used in this part, any vessel equal to or greater than 50 ft (15.2 m) in length overall.

Length overall (LOA) or length of a vessel as used in this part, means the horizontal distance, rounded to the nearest foot (with any 0.5 foot or 0.15 meter fraction rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 to this part). ''Stem'' is the foremost part of the vessel, consisting of a section of timber or fiberglass, or cast forged or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. ''Stern'' is the aftermost part of the vessel.

Live coral means any precious coral that has live coral polyps or tissue.

Live rock means any natural, hard substrate, including dead coral or rock, to which is attached, or which supports, any living marine life form associated with coral reefs.

Low-use marine protected area (MPA) means an area of the U.S. EEZ where fishing operations have specific restrictions in order to protect the coral reef ecosystem, as specified under area restrictions in subparts B through F of this part.

Main Hawaiian Islands (MHI) means the islands of the Hawaii Archipelago lying to the east of 161° W. long.

Mariana Archipelago means Guam and the Northern Mariana Islands.

Mariana FEP means the Fishery Ecosystem Plan for the Mariana Archipelago.

Medium vessel, as used in this part, means any vessel equal to or more than 40 ft (12.2 m) and less than 50 ft (15.2 m) LOA.

Non-commercial fishing means fishing that does not meet the definition of commercial fishing.

Non-precious coral means any species of coral other than those listed under the definitions for precious coral in §§ 665.161, 665.261, 665.461, and 665.661.

Non-selective gear means any gear used for harvesting coral that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead coral.

Northwestern Hawaiian Islands (NWHI) means the islands of the Hawaiian Archipelago lying to the west of 161° W. long.

No-take MPA means an area of the U.S. EEZ that is closed to fishing for or harvesting of any management unit species, as defined in subparts B through F of this part.

Offload means to remove management unit species from a vessel.

Offset circle hook means a circle hook in which the barbed end of the hook is displaced relative to the parallel plane of the eyed end, or shank, of the hook when laid on its side.

Owner, as used in the regulations for the crustacean fisheries in subparts B through E of this part and § 665.203(i) and (j), means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the United States Coast Guard (USCG) for a documented vessel, or in a registration certificate issued by a State, a territory, or the USCG for an undocumented vessel. As used in the regulations for the precious coral fisheries in subparts B through E of this part and § 665.203(c) through (h), the definition of ''owner'' in § 600.10 of this chapter continues to apply.

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 808–944–2200.

Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean) means Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll.

Pelagics FEP means the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region.

Pelagics FMP means the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region that was established in 1987 and replaced by the western Pacific pelagic FEP.

Potentially harvested coral reef taxa (PHCRT) means coral reef associated species, families, or subfamilies, as defined in §§ 665.121, 665.221, 665.421, and 665.621, for which little or no information is available beyond general taxonomic and distribution descriptions. These species have either not been caught in the past or have been harvested annually in amounts less than 454.54 kg (1,000 lb).

Precious Corals FMP means the Fishery Management Plan for Precious Corals of the Western Pacific Region established in 1983 and replaced by fishery ecosystem plans (FEPs).

PRIA FEP means the Fishery Ecosystem Plan for the Pacific Remote Island Areas of Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

Protected species means an animal protected under the MMPA, as amended, listed under the ESA, as amended, or subject to the Migratory Bird Treaty Act, as amended.

Receiving vessel means a vessel that receives fish or fish products from a fishing vessel, and with regard to a vessel holding a permit under § 665.801(e) that also lands western Pacific pelagic management unit species taken by other vessels using longline gear.

Regional Administrator means Regional Administrator, Pacific Islands Region, NMFS (*see* Table 1 of § 600.502 of this chapter for address).

Selective gear means any gear used for harvesting coral that can discriminate or differentiate between type, size, quality, or characteristics of living or dead coral.

Special Agent-In-Charge (SAC) means the Special-Agent-In-Charge, NMFS, Pacific Islands Enforcement Division, or a designee of the SAC, located at 1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814, telephone number 808–203–2500.

Special permit means a permit issued to allow fishing for coral reef ecosystem management unit species in low-use MPAs or to fish for any PHCRT.

State of Hawaii commercial marine license means the license required by the State of Hawaii for anyone to take marine life for commercial purposes (also known as the commercial fishing license).

Transship means to offload or otherwise transfer management unit species or products thereof to a receiving vessel.

Trap means a box-like device used for catching and holding lobsters or fish.

U.S. harvested coral means coral caught, taken, or harvested by vessels of the United States within any fishery for which an FMP or FEP has been implemented under the Magnuson-Stevens Act.

Vessel monitoring system unit (VMS unit) means the hardware and software owned by NMFS, installed on vessels by NMFS, and required to track and transmit the positions of certain vessels.

Western Pacific fishery management area means those waters shoreward of the outer boundary of the EEZ around American Samoa, Guam, Hawaii, CNMI, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands.

§ 665.13 Permits and fees.

(a) Applicability. The requirements for permits for specific western Pacific fisheries are set forth in subparts B through F of this part.

(b) Validity. Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) Application.

(1) A western Pacific Federal fisheries permit application may be obtained from NMFS PIRO to apply for a permit or permits to operate in any of the fisheries regulated under subparts B through F of this part. The completed application must be submitted to PIRO. In no case shall PIRO accept an application that is not on the western Pacific Federal fisheries permit application form.

(2) A minimum of 15 days after the day PIRO receives a complete application should be allowed for processing a permit application for fisheries under subparts B through F of this part. If an incomplete or improperly completed application is filed, the applicant will be sent a letter of notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of the letter of notification of deficiency, the application will be considered abandoned.

(d) Change in application information. Any change in the permit application information or vessel documentation, submitted under paragraph (c) of this section, must be reported to PIRO in writing within 15 days of the change to avoid a delay in processing the permit application. A minimum of 10 days from the day the information is received by PIRO should be given for PIRO to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) or 15 CFR part 904, subpart D.

(e) Issuance. After receiving a complete application submitted under paragraph (c) of this section, the Regional Administrator will issue a permit to an applicant who is eligible under this part, as appropriate.

(f) Fees.

(1) PIRO will not charge a fee for a permit issued under §§ 665.142, 665.162, 665.242, 665.262, 665.442, 665.462, 665.642, or 665.662 of this part, for a Ho'omalu limited access permit issued under § 665.203, or for a Guam bottomfish permit issued under § 665.404.

(2) PIRO will charge a non-refundable processing fee for each application (including transfers and renewals) for the permits listed in paragraphs (f)(2)(i) through (viii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, for determining the administrative costs of each special product or service incurred in processing the permit. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude the issuance, transfer or renewal of any of these permits:

(i) Hawaii longline limited access permit.

(ii) Mau Zone limited access permit.

(iii) Coral reef ecosystem special permit.

(iv) American Samoa longline limited access permit.

(v) MHI non-commercial bottomfish permit.

(vi) Western Pacific squid jig permit.

(vii) Crustacean permit.

(viii) CNMI commercial bottomfish permit.

(g) Expiration. Permits issued under subparts B through F of this part are valid for the period specified on the permit unless revoked, suspended, transferred, or modified under 15 CFR part 904.

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

(i) Transfer. An application for a permit transfer under §§ 665.203(d), 665.242(e), or 665.801(k), or for registration of a permit for use with a replacement vessel under § 665.203(i), must be submitted to PIRO as described in paragraph (c) of this section.

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

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

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

(m) Permit appeals. Procedures for appeals of permitting and administrative actions are specified in the relevant subparts of this part.

§ 665.14 Reporting and recordkeeping.

(a) Except for precious coral and crustacean fisheries, any person who is required to do so by applicable State law or regulation must make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable State law or regulation.

(b) Fishing record forms.

(1) Applicability.

(i) The operator of any fishing vessel subject to the requirements of §§ 665.124, 665.142, 665.162, 665.203(a)(2), 665.224, 665.242, 665.262, 665.404, 665.424, 665.442, 665.462, 665.603, 665.624, 665.642, 665.662, or 665.801 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as allowed in paragraph (b)(1)(iii) of this section.

(ii) All information specified by the Regional Administrator must be recorded on paper or electronically within 24 hours after the completion of each fishing day. The logbook information, reported on paper or electronically, for each day of the fishing trip must be signed and dated or otherwise authenticated by the vessel operator in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this paragraph (b).

(iii) In lieu of the requirements in paragraph (a)(1)(i) of this section, the operator of a fishing vessel registered for use under a Western Pacific squid jig permit pursuant to the requirements of § 665.801(g) may participate in a State reporting system. If participating in a State reporting system, all required information must be recorded and submitted in the exact manner required by applicable State law or regulation.

(2) Timeliness of submission.

(i) If fishing was authorized under a permit pursuant to §§ 665.142, 665.242, 665.442, 665.404, 665.162, 665.262, 665.462, 665.662, or 665.801, the vessel operator must submit the original logbook information for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (iii) of this section.

(ii) If fishing was authorized under a permit pursuant to § 665.203(a)(2), the vessel operator or vessel owner must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip.

(iii) If fishing was authorized under a PRIA bottomfish permit pursuant to § 665.603(a), PRIA pelagic troll and handline permit pursuant to § 665.801(f), crustacean fishing permit for the PRIA (Permit Area 4) pursuant to § 665.642(a), or a precious coral fishing permit for Permit Area X–P–PI pursuant to § 665.662, the original logbook form for each day of fishing within EEZ waters around the PRIA must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(iv) If fishing was authorized under a permit pursuant to §§ 665.124, 665.224, 665.424, or 665.624, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(c) Transshipment logbooks. Any person subject to the requirements of §§ 665.124(a)(2), 665.224(a)(2), 665.424(a)(2), 665.624(a)(2), or 665.801(e) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 72 hours of each landing of western Pacific pelagic management unit species. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 7 days of each landing of coral reef ecosystem management unit species.

(d) Sales report. The operator of any fishing vessel subject to the requirements of §§ 665.142, 665.242, 665.442, or 665.642, or the owner of a medium or large fishing vessel subject to the requirements of § 665.404(a)(2) must submit to the Regional Administrator, within 72 hours of offloading of crustacean management unit species, an accurate and complete sales report on a form provided by the Regional Administrator. The form must be signed and dated by the fishing vessel operator.

(e) Packing or weigh-out slips. The operator of any fishing vessel subject to the requirements of §§ 665.142, 665.242, 665.442, or 665.642 must attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing or weighout slips have not been provided in time by the buyer(s).

(f) Modification of reporting and recordkeeping requirements. The Regional Administrator may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing record forms, transshipment logbook, and sales report forms and timeliness by which the information is to be provided, including the submission of packing or weighout slips.

(g) Availability of records for inspection.

(1) Western Pacific pelagic management unit species. Upon request, any fish dealer must immediately provide an authorized officer access to inspect and copy all records of purchases, sales, or other transactions involving western Pacific pelagic management unit species taken or handled by longline vessels that have permits issued under this subpart or that are otherwise subject to subpart F of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner and operator of the vessel.

(ii) The weight, number, and size of each species of fish involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(2) Crustacean management unit species. Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Administrator, to access, inspect, and copy all records relating to the harvest, sale, or transfer of crustacean management unit species taken by vessels that have permits issued under this subpart or §§ 665.140 through 665.145, 665.240 through 665.252, 665.440 through 665.445, or 665.640 through 665.645 of this part. This requirement may be met by furnishing the information on a worksheet provided by the Regional Administrator. The information must include, but is not limited to:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The amount, number, and size of each management unit species involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(3) Bottomfish and seamount groundfish management unit species. Any person who is required by State laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and by §§ 665.100 through 665.105, 665.200 through 665.212, 665.400 through 665.407, and 665.600 through 665.606 of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(4) Coral reef ecosystem MUS. Any person who has a special permit and who is required by State laws and regulations to maintain and submit records of catch and effort, landings and sales for coral reef ecosystem MUS by this subpart and §§ 665.120 through 665.128, 665.220 through 665.228, 665.420 through 665.428, or 665.620 through 665.628 of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer as defined in § 600.10 of this chapter.

(h) State reporting. Any person who has a permit under §§ 665.124, 665.203, 665.224, 665.404, 665.424, 665.603, or 665.624 and who is regulated by State laws and regulations to maintain and submit records of catch and effort, landings and sales for vessels regulated by subparts B through F of this part must maintain and submit those records in the exact manner required by State laws and regulations.

§ 665.15 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter, it is unlawful for any person to:

(a) Engage in fishing without a valid permit or facsimile of a valid permit on board the vessel and available for inspection by an authorized officer, when a permit is required under § 665.13 or 665.17, unless the vessel was at sea when the permit was issued under § 665.13, in which case the permit must be on board the vessel before its next trip.

(b) File false information on any application for a fishing permit under § 665.13 or an EFP under § 665.17.

(c) Fail to file reports in the exact manner required by any State law or regulation, as required in § 665.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§ 665.14 and 665.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Administrator for inspection or copying, any records that must be made available in accordance with § 665.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§ 665.16, 665.128, 665.228, 665.246, 665.428, 665.628, or 665.804.

(g) Violate a term or condition of an EFP issued under § 665.17.

(h) Fail to report any take of or interaction with protected species as required by § 665.17(k).

(i) Fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS to make accommodations available for an observer under §§ 665.17, 665.105, 665.145, 665.207, 665.247, 665.407, 665.445, 665.606, 665.645, or 665.808.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Administrator under §§ 665.105, 665.145, 665.207, 665.247, 665.407, 665.445, 665.606, 665.645, or 665.808, or under any provision in an EFP issued under § 665.17.

(k) Fail to notify officials as required in §§ 665.126, 665.144, 665.205, 665.226, 665.244, 665.426, 665.444, 665.626, 665.644, 665.803, or 665.808.

(l) Fish for, take or retain within a no-take MPA, defined in §§ 665.99, 665.199, 665.399, or 665.599, any bottomfish management unit species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, seamount groundfish or coral reef ecosystem MUS.

(m) Fail to comply with a term or condition governing the vessel monitoring system in violation of § 665.19.

(n) Fish for, catch, or harvest management unit species without an operational VMS unit on board the vessel after installation of the VMS unit by NMFS, in violation of § 665.19(e)(2).

(o) Possess management unit species, that were harvested after NMFS has installed the VMS unit on the vessel, on board that vessel without an operational VMS unit, in violation of § 665.19(e)(2).

(p) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or attempt any of the same; or move or remove a VMS unit without the prior permission of the SAC in violation of § 665.19(e)(3).

(q) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit, in violation of § 665.19(e).

(r) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit, in violation of § 665.19(e).

(s) Interfere with, impede, delay, or prevent access to a VMS unit by an NMFS observer, in violation of § 665.808(f)(4).

(t) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC, in violation of § 665.19(f).

§ 665.16 Vessel identification.

(a) Each fishing vessel subject to this subpart, except those identified in paragraph (e) of this section, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing and receiving vessels of 65 ft (19.8 m) LOA or longer, and at least 10 inches (25.4 cm) in height for all other vessels, except that vessels in precious coral fisheries and 65 ft (19.8 m) LOA or longer must be marked in block Arabic numerals at least 14 inches (35.6 cm) in height. Marking must be legible and of a color that contrasts with the background.

(c) The vessel operator must ensure that the official number is clearly legible and in good repair.

(d) The vessel operator must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(e) The following fishing vessels are exempt from the vessel identification requirements in this section:

(1) A vessel registered for use under a MHI non-commercial bottomfish permit that is in compliance with State of Hawaii bottomfish vessel registration and marking requirements.

(2) A vessel less than 40 ft (12.2 m) LOA registered for use under a CNMI commercial bottomfish permit that is in compliance with CNMI bottomfish vessel registration and marking requirements.

§ 665.17 Experimental fishing.

(a) General. The Regional Administrator may authorize, for limited purposes, the direct or incidental harvest of management unit species that would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Administrator in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) Observers. No experimental fishing for crustacean management unit

species may be conducted unless an NMFS observer is aboard the vessel.

(c) Application. An applicant for an EFP must submit to the Regional Administrator at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

(5) For each vessel to be covered by the EFP:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, State license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(e) Issuance.

(1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal and will give interested persons an opportunity to comment. The Regional Administrator will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected State, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Administrator will consult with the Council and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (e)(2) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FEP.

(v) The applicant has failed to demonstrate a valid justification for the permit.

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.

(iii) The times and places where experimental fishing may be conducted.

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.

(v) The condition that observers be carried aboard vessels operating under an EFP.

(vi) Data reporting requirements.

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FEP.

(f) Duration. Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one (1) year from the date of issuance, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(g) Alteration. Any EFP that has been altered, erased, or mutilated is invalid.

(h) Transfer. EFPs issued under subparts B through F of this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(i) Inspection. Any EFP issued under subparts B through F of this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(j) Sanctions. Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of subparts A through F of this part, any other applicable provision of this part, the Magnuson-Stevens Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904 subpart D. Other sanctions available under the statute will be applicable.

(k) Protected species. Persons fishing under an EFP must report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Administrator within 3 days of arriving in port.

§ 665.18 Framework adjustments to management measures.

Framework measures described below for each specific fishery are valid for all management areas, except where specifically noted in this section.

(a) Pelagic measures.

(1) Introduction. Adjustments in management measures may be made through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the fishery. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(2) Annual report. By June 30 of each year, the Council-appointed pelagics monitoring team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) Procedure for established measures.

(i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) Procedure for new measures.

(i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by **Federal Register** notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** notice summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(b) Crustacean measures.

(1) Introduction. New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(2) Annual report. By June 30 of each year, the Council-appointed team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) Procedure for established measures.

(i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) Procedure for new measures.

(i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(c) Bottomfish measures.

(1) Annual reports. By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(i) Fishery performance data.

(ii) Summary of recent research and survey results.

(iii) Habitat conditions and recent alterations.

(iv) Enforcement activities and problems.

(v) Administrative actions (*e.g.*, data collection and reporting, permits).

(vi) State and territorial management actions.

(vii) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and State/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:

(A) Mean size of the catch of any species in any area is a pre-reproductive size.

(B) Ratio of fishing mortality to natural mortality for any species.

(C) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.

(D) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.

(E) Substantial decline in ex-vessel revenue relative to baseline levels.

(F) Significant shift in the relative proportions of gear in any one area.

(G) Significant change in the frozen/fresh components of the bottomfish catch.

(H) Entry/exit of fishermen in any area.

(I) Per-trip costs for bottomfish fishing exceed per-trip revenues for a significant percentage of trips.

(J) Significant decline or increase in total bottomfish landings in any area.

(K) Change in species composition of the bottomfish catch in any area.

(L) Research results.

(M) Habitat degradation or environmental problems.

(N) Reported interactions between bottomfish fishing operations and protected species in the NWHI.

(viii) Recommendations for Council action.

(ix) Estimated impacts of recommended action.

(2) Recommendation of management action.

(i) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, State/territorial action, enforcement or administrative elements,

and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(ii) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(iii) The Council may recommend management action by either the State/territorial governments or by Federal regulation.

(3) Federal management action.

(i) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Administrator after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(ii) The Regional Administrator will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(iii) The Council may appeal a denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(iv) The Regional Administrator and the Assistant Administrator will make their decisions in accord with the Magnuson-Stevens Act, other applicable law, and the bottomfish measures of the FEPs.

(v) To minimize conflicts between the Federal and State management systems, the Council will use the procedures in paragraph (c)(2) of this section to respond to State/territorial management actions. Council consideration of action would normally begin with a representative of the State or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(4) Access limitation procedures.

(i) Access limitation may be adopted under this paragraph (c)(4) only for the NWHI, American Samoa, and Guam.

(ii) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (c)(4), the following requirements must be met:

(A) The bottomfish monitoring team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(B) Public hearings must be held specifically addressing the limited access proposals.

(C) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Administrator on administrative decisions.

(D) The Council's recommendation to the Regional Administrator must be approved by a two-thirds majority of the voting members.

(5) Five-year review. The Council will conduct a comprehensive review on the effectiveness of the Mau Zone limited access program 5 years following implementation of the program. The Council will consider the extent to which the FEP objectives have been met and verify that the target number of vessels established for the fishery is appropriate for current fishing activity levels, catch rates, and biological condition of the stocks. The Council may establish a new target number based on the 5-year review.

(d) Precious coral measures.

(1) Introduction. Established management measures may be revised and new management measures may be established and/or revised through rulemaking if new information demonstrates that there are biological, social, or economic concerns in a precious coral permit area. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, quotas, season, or levels of catch and/or in effort.

(2) Annual report. By June 30 of each year, the Council-appointed precious coral team will prepare an annual report on the fisheries in the management area. The report will contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) Procedure for established measures.

(i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation will include supporting rationale and analysis and will be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) Procedure for new measures.

(i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action and the time and place for any subsequent Council meeting(s) to consider the new measure. At a subsequent public meeting, the Council will consider public comments and other information received before making a recommendation to the Regional Administrator about any new measure. If approved by the Regional Administrator, NMFS may implement the Council's recommendation by rulemaking.

(e) Coral reef ecosystem measures.

(1) Procedure for established measures.

(i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(2) Procedure for new measures.

(i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions. New measures include, but are not limited to, catch limits, resource size limits, closures, effort limitations, reporting and recordkeeping requirements.

(ii) The Regional Administrator will publicize, including by **Federal Register** notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(A) The Regional Administrator will consider the Council's recommendation and supporting rationale and analysis, and, if the Regional Administrator concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, the Regional Administrator will provide a written explanation for the denial within 2 weeks of the decision.

(B) The Council may appeal a denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(C) The Regional Administrator and the Assistant Administrator will make their decisions in accordance with the Magnuson-Stevens Act, other applicable laws, and the FEPs.

(D) To minimize conflicts between the Federal and State/territorial/commonwealth management systems, the Council will use the procedures in this paragraph (e)(2)(ii) to respond to State/territorial/commonwealth management actions. The Council's consideration of action would normally begin with a representative of the State, territorial or commonwealth government bringing a potential or actual management conflict or need to the Council's attention.

(3) Annual report. By July 31 of each year, a Council-appointed coral reef ecosystem monitoring team will prepare an annual report on coral reef fisheries of the western Pacific region. The report will contain, among other things:

(i) Fishery performance data, summaries of new information and assessments of need for Council action.

(ii) Recommendation for Council action. The Council will evaluate the annual report and advisory body recommendations and may recommend management action by either the State/territorial/commonwealth governments or by Federal regulation.

(iii) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Administrator after considering the views of its advisory bodies.

§ 665.19 Vessel monitoring system.

(a) *Applicability.* The holder of any of the following permits is subject to the vessel monitoring system requirements in this part:

(1) Hawaii longline limited access permit issued pursuant to § 665.801(b);

(2) American Samoa longline limited entry permit, for vessel size Class C or D, issued pursuant to § 665.801(c);

(3) Vessels permitted to fish in Crustacean Permit Area 1 VMS Subarea; or

(4) CNMI commercial bottomfish permit, if the vessel is a medium or large bottomfish vessel, issued pursuant to § 665.404(a)(2).

(b) VMS unit. Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(c) Notification. After a permit holder subject to § 665.19(a) 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 and operate the VMS unit after the date scheduled for installation.

(d) Fees and charges. During the experimental VMS program, the holder of a permit subject to § 665.19(a) 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. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(e) Permit holder duties. The holder of a permit subject to § 665.19(a) and master of the vessel must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry and continuously operate the VMS unit on board whenever the vessel is at sea.

(3) Not remove, relocate, or make non-operational the VMS unit without prior approval from the SAC.

(f) Authorization by the SAC. The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

Subpart B—American Samoa Fisheries

§ 665.98 Management area.

The American Samoa fishery management area is the EEZ seaward of the Territory of American Samoa with the inner boundary coterminous with the seaward boundaries of the Territory of American Samoa and the outer boundary designated as a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.99 Area restrictions.

Fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters around American Samoa are no-take MPAs: Landward of the 50 fm (91.5 m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

§ 665.100 American Samoa bottomfish fisheries. [Reserved]

§ 665.101 Definitions.

As used in §§ 665.100 through 665.119:

American Samoa bottomfish management unit species (American Samoa bottomfish MUS) means the following fish:

Samoan name	English common name	Scientific name
palu-gutusiliva	red snapper, silvermouth	*Aphareus rutilans*
asoama	gray snapper, jobfish	*Aprion virescens*
sapoanae	giant trevally, jack	*Caranx ignobilis*
tafauli	black trevally, jack	*Caranx lugubris*
fausi	blacktip grouper	*Epinephelus fasciatus*
papa, velo	lunartail grouper	*Variola louti*
palu malau	red snapper	*Etelis carbunculus*
palu-loa	red snapper	*Etelis coruscans*

Samoan name	English common name	Scientific name
filoa-gutumumu	ambon emperor	*Lethrinus amboinensis*
filoa-paomumu	redgill emperor	*Lethrinus rubrioperculatus*
savane	blueline snapper	*Lutjanus kasmira*
palu-i'usama	yellowtail snapper	*Pristipomoides auricilla*
palu-'ena'ena	pink snapper	*Pristipomoides filamentosus*
palu-sina	yelloweye snapper	*Pristipomoides flavipinnis*
palu	pink snapper	*Pristipomoides seiboldii*
palu-ula, palu-sega	snapper	*Pristipomoides zonatus*
malauli	amberjack	*Seriola dumerili*

§ 665.102 [Reserved]

§ 665.103 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to fish for American Samoa bottomfish MUS using gear prohibited under § 665.104.

§ 665.104 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for American Samoa bottomfish MUS with bottom trawls and bottom set gillnets is prohibited.

(b) Possession of gear. The possession of a bottom trawl or bottom set gillnet within the American Samoa fishery management area is prohibited.

(c) Poisons and explosives. The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish is prohibited.

§ 665.105 At-sea observer coverage.

All fishing vessels subject to §§ 665.100 through 665.105 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.106–665.119 [Reserved]

§ 665.120 American Samoa coral reef ecosystem fisheries. [Reserved]

§ 665.121 Definitions.

As used in §§ 665.120 through 665.139:

American Samoa coral reef ecosystem management unit species (American Samoa coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

American Samoa Currently Harvested Coral Reef Taxa:

Family name	Samoan name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	afinamea	orange-spot surgeonfish	*Acanthurus olivaceus.*
		yellowfin surgeonfish	*Acanthurus xanthopterus.*
	aanini	convict tang	*Acanthurus triostegus.*
		eye-striped surgeonfish	*Acanthurus dussumieri.*
	ponepone, gaitolama	blue-lined surgeon	*Acanthurus nigroris.*
	alogo	blue-banded surgeonfish	*Acanthurus lineatus.*
	pone-i'usama	blackstreak surgeonfish	*Acanthurus nigricauda.*
	laulama,	whitecheek surgeonfish	*Acanthurus nigricans.*
	maogo	white-spotted surgeonfish	*Acanthurus guttatus.*
		ringtail surgeonfish	*Acanthurus blochii.*
	ponepone	brown surgeonfish	*Acanthurus nigrofuscus.*
		elongate surgeonfish	*Acanthurus mata.*
		mimic surgeonfish	*Acanthurus pyroferus.*
	pone	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	pone, pala'ia, logoulia	striped bristletooth	*Ctenochaetus striatus.*
		two-spot bristletooth	*Ctenochaetus binotatus.*
	ume-isu	bluespine unicornfish	*Naso unicornus.*
	ili'ilia, umelei	orangespine unicornfish	*Naso lituratus.*
		black tongue unicornfish	*Naso hexacanthus.*
	ume-masimasi	bignose unicornfish	*Naso vlamingii.*
		whitemargin unicornfish	*Naso annulatus.*
	ume-ulutao	spotted unicornfish	*Naso brevirostris.*
		barred unicornfish	*Naso thynnoides.*
Balistidae (Triggerfishes)	sumu, sumu-laulau	titan triggerfish	*Balistoides viridescens.*
		orangestriped triggerfish	*Balistapus undulatus.*
	sumu-'apa'apasina, sumu-si'umumu	pinktail triggerfish	*Melichthys vidua.*
	sumu-uli	black triggerfish	*Melichthys niger.*
	sumu-laulau	blue triggerfish	*Pseudobalistes fuscus.*
	sumu-uo'uo, sumu-aloalo	picassofish	*Rhinecanthus aculeatus.*
	sumu-gase'ele'ele	bridled triggerfish	*Sufflamen fraenatum.*
	atule	bigeye scad	*Selar crumenophthalmus.*
	atuleau, namuauli	mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)	malie-aloalo	grey reef shark	*Carcharhinus amblyrhynchos.*
	aso	silvertip shark	*Carcharhinus albimarginatus.*
	malie	Galapagos shark	*Carcharhinus galapagensis.*
	apeape, malie-alamata	blacktip reef shark	*Carcharhinus melanopterus.*

Family name	Samoan name	English common name	Scientific name
	malu	whitetip reef shark	*Triaenodon obesus*.
Holocentridae (Soldierfish, squirrelfish).	malau-ugatele, malau-va'ava'a	bigscale soldierfish	*Myripristis berndti*.
	malau-tui	bronze soldierfish	*Myripristis adusta*.
		blotcheye soldierfish	*Myripristis murdjan*.
		brick soldierfish	*Myripristis amaena*.
	malau-mamo, malau-va'ava'a.	scarlet soldierfish	*Myripristis pralinia*.
	malau-tuauli	violet soldierfish	*Myripristis violacea*.
		whitetip soldierfish	*Myripristis vittata*.
		yellowfin soldierfish	*Myripristis chryseres*.
	malau-pu'u	pearly soldierfish	*Myripristis kuntee*.
		double tooth squirrelfish	*Myripristis hexagona*.
		blackspot squirrelfish	*Sargocentron melanospilos*.
	malau-tianiu	file-lined squirrelfish	*Sargocentron microstoma*.
		pink squirrelfish	*Sargocentron tiereoides*.
	malau-tui, malau-talapu'u, malau-tusitusi, malau-pauli.	crown squirrelfish	*Sargocentron diadema*.
		peppered squirrelfish	*Sargocentron punctatissimum*.
		blue-lined squirrelfish	*Sargocentron tiere*.
	tamalu, mu-malau, malau-toa	saber or long jaw squirrelfish	*Sargocentron spiniferum*.
		spotfin squirrelfish	*Neoniphon* spp..
Kuhliidae (Flagtails)	safole, inato	barred flag-tail	*Kuhlia mugil*.
Kyphosidae (Rudderfish)	nanue, mata-mutu, mutumutu.	rudderfish	*Kyphosus cinerascens Kyphosus biggibus*.
	nanue	rudderfish	*Kyphosus vaigienses*.
Labridae (Wrasses)	lalafi, tagafa. malakea	napoleon wrasse	*Cheilinus undulatus*.
	lalafi-matamumu	triple-tail wrasse	*Cheilinus trilobatus*.
	lalafi-matapua'a	floral wrasse	*Cheilinus chlorourus*.
	lalafi-pulepule	harlequin tuskfish	*Cheilinus fasciatus*.
	sugale	bandcheek wrasse	*Oxycheilinus diagrammus*.
	sugale	arenatus wrasse	*Oxycheilinus arenatus*.
	sugale-tatanu	whitepatch wrasse	*Xyrichtys aneitensis*.
	sugale-mo'o	cigar wrasse	*Cheilio inermis*.
	sugale-laugutu, sugale-uli, sugale-aloa, sugale-lupe.	blackeye thicklip	*Hemigymnus melapterus*.
	sugale-gutumafia	barred thicklip	*Hemigymnus fasciatus*.
	lape, sugale-pagota	three-spot wrasse	*Halichoeres trimaculatus*.
	sugale-a'au, sugale-pagota, ifigi	checkerboard wrasse	*Halichoeres hortulanus*.
	sugale-uluvela	weedy surge wrasse	*Halichoeres margaritaceus*.
	uloulo-gatala, patagaloa	surge wrasse	*Thalassoma purpureum*.
	lape-moana	red ribbon wrasse	*Thalassoma quinquevittatum*.
	sugale-samasama	sunset wrasse	*Thalassoma lutescens*.
	sugale-la'o, sugale-taili, sugale-gasufi.	rockmover wrasse	*Novaculichthys taeniourus*.
Mullidae (Goatfishes)	i'asina, vete, afulu	yellow goatfish	*Mulloidichthys* spp.
	Vete	yellowfin goatfish	*Mulloidichthys vanicolensis*.
	afolu, afulu	yellowstripe goatfish	*Mulloidichthys flavolineatus*.
	afoul, afulu	banded goatfish	*Parupeneus* spp.
	tusia, tulausaena, ta'uleia	dash-dot goatfish	*Parupeneus barberinus*.
	matulau-moana	doublebar goatfish	*Parupeneus bifasciatus*.
	moana-ula	redspot goatfish	*Parupeneus heptacanthus*.
	i'asina, vete, afulu, moana	yellowsaddle goatfish	*Parupeneus cyclostomas*.
	matulau-ilamutu	side-spot goatfish	*Parupeneus pleurostigma*.
	i'asina, vete, afulu	multi-barred goatfish	*Parupeneus multifaciatus*.
Mugilidae (Mullets)	anae, aua. fuafua	fringelip mullet	*Crenimugil crenilabis*.
	moi, poi	false mullet	*Neomyxus leuciscus*.
Muraenidae (Moray eels)	pusi	yellowmargin moray eel	*Gymnothorax flavimarginatus*.
	maoa'e	giant moray eel	*Gymnothorax javanicus*.
	pusi-pulepule	undulated moray eel	*Gymnothorax undulatus*.
Octopodidae (Octopus)	fe'e	octopus	*Octopus cyanea*.
	fe'e	octopus	*Octopus ornatus*.
Polynemidae	umiumia, i'ausi	threadfin	*Polydactylus sexfilis*.
Pricanthidae (Bigeye)	matapula	glasseye	*Heteropriacanthus cruentatus*.
	matapula	bigeye	*Priacanthus hamrur*.
Scaridae (Parrotfishes)	fuga	stareye parrotfish	*Calotomus carolinus*.
	fuga, galo-uluto'i, fuga-valea, laea-mamanu.	parrotfish	*Scarus* spp.
	ulapokea, laea-ulapokea	Pacific longnose parrotfish	*Hipposcarus longiceps*.
Scombridae	tagi	dogtooth tuna	*Gymnosarda unicolor*.
Siganidae (Rabbitfish)	loloa, lo	forktail rabbitfish	*Siganus aregenteus*.

Family name	Samoan name	English common name	Scientific name
Sphyraenidae (Barracuda)	sapatu	heller's barracuda	*Sphyraena helleri*.
	saosao	great barracuda	*Sphyraena barracuda*.
Turbinidae (turban shells, green snails).	alili	green snails	*Turbo* spp.

American Samoa Potentially Harvested Reef Taxa:

Samoan name	English common name	Scientific name
sugale, sugale-vaolo, sugale-a'a, lalafi, lape-a'au, la'ofia	wrasses (Those species not listed as CHCRT)	Labridae
malie, apoapo, moemoeao	sharks (Those species not listed as CHCRT)	Carcharhinidae, Sphyrnidae
fai	rays and skates	Dasyatididae, Myliobatidae
pe'ape'a	batfishes	Ephippidae
mutumutu, misimisi, ava'ava-moana	sweetlips	Haemulidae
talitaliuli	remoras	Echeneidae
mo'o, mo'otai	tilefishes	Malacanthidae
tiva	dottybacks	Pseudochromidae
aneanea, tafuti	prettyfins	Plesiopidae
tapua	coral crouchers	Caracanthidae
	flashlightfishes	Anomalopidae
gatala, ataata, vaolo, gatala-uli, gatala-sega, gatala-aleva, ateate, apoua, susami, gatala-sina, gatala-mumu.	groupers (Those species not listed as CHCRT or BMUS).	Serrandiae
lupo, lupota, mamalusi, ulua, sapoanae, taupapa, nato, filu, atuleau, malauli-apamoana, malauli-sinasama, malauli-matalapo'a, lai.	jacks and scads (Those species not listed as CHCRT or BMUS).	Carangidae
malau	soldierfishes and squirrelfishes (Those species not listed as CHCRT).	Holocentridae
i'asina, vete, afulu, afoul, ulula'oa	goatfishes (Those species not listed as CHCRT)	Mullidae
pone, palagi	surgeonfishes (Those species not listed as CHCRT)	Acanthuridae
pelupelu, nefu	herrings	Clupeidae
nefu, file	anchovies	Engraulidae
mano'o, mano'o-popo, mano'o-fugafuga, mano'o-apofusami, mano'o-a'au.	gobies	Gobiidae
mu, mu-taiva, tamala, malai, feloitega, mu-mafalaugutu, savane-ulusama, matala'oa.	snappers (Those species not listed as CHCRT or BMUS).	Lutjanidae
sumu, sumu-papa, sumu-taulau	trigger fishes (Those species not listed as CHCRT)	Balistidae
lo	rabbitfishes (Those species not listed as CHCRT)	Siganidae
nanue, matamutu, mutumutu	rudderfishes (Those species not listed as CHCRT)	Kyphosidae
ulisega, atule-toto	fusiliers	Caesionidae
filoa, mata'ele'ele, ulamalosi	emperors (Those species not listed as CHCRT or BMUS).	Lethrinidae
pusi, maoa'e, atapanoa, u'aulu, apeape, fafa, gatamea, pusi-solasulu.	eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Moringuidae, Ophichthidae
fo, fo-tusiloloa, fo-si'umu, fo-loloa, fo-tala, fo-manifi, fo-aialo, fo-tuauli.	cardinalfishes	Apogonidae
pe'ape'a, laulaufau	moorish idols	Zanclidae
tifitifi, si'u, i'usamasama, tifitifi-segaula, laulafau-laumea, alosina.	butterfly fishes	Chaetodontidae
tu'u'u, tu'u'u-sama, tu'u'u-lega, tu'u'u-ulavapua, tu'u'u-matamalu, tu'u'u-alomu, tu'u'u-uluvela, tu'u'u-atugauli, tu'u'u-tusiuli, tu'u'u-manini.	angelfishes	Pomacanthidae
tu'u'u, mutu, mamo, tu'u'u-lumane	damselfishes	Pomacentridae
i'atala, la'otele, nofu	scorpionfishes	Scorpaenidae
mano'o, mano'o-mo'o, mano'o-palea, mano'o-la'o.	blennies	Blenniidae
sapatu	barracudas (Those species not listed as CHCRT)	Sphyraenidae
la'o, ulutu'i, lausiva	hawkfishes (Those species not listed as CHCRT)	Cirrhitidae
la'otale, nofu	frogfishes	Antennariidae
	pipefishes and seahorses	Syngnathidae
ta'oto	sandperches	Pinguipedidae
tagi	dog tooth tuna	*Gymnosarda unicolor*
taoto-ena, taoto-sama, 'au'aulauti, taotito	trumpetfish	*Aulostomus chinensis*
taotao, taoto-ama	cornetfish	*Fistularia commersoni*
sue, sue-vaolo, sue-va'a, sue-lega, sue-mu, sue-uli, sue-lape, sue-afa, sue-sugale.	puffer fishes and porcupine fishes	Tetradontidae
ali	flounders and soles	Bothidae, Soleidae
moamoa	trunkfishes	Ostraciidae
fugafuga, tuitui, sava'e	sea cucumbers and sea urchins	Echinoderms
amu	blue corals	Heliopora
amu	organpipe corals	Tubipora

Samoan name	English common name	Scientific name
	ahermatypic corals	Azooxanthellates
amu	mushroom corals	Fungiidae
amu	small and large coral polyps	
amu	fire corals	Millepora
amu	soft corals and gorgonians	
lumane, matalelei	anemones	Actinaria
	soft zoanthid corals	Zoanthinaria
	(Those species not listed as CHCRT)	Mollusca
sisi-sami	sea snails	Gastropoda
aliao, alili		*Trochus* spp.
sea	sea slugs	Opistobranches
	black lipped pearl oyster	*Pinctada margaritifera*
faisua	giant clam	Tridacnidae
pipi, asi, fatuaua, tio, pae, fole	other clams	Other Bivalves
ula, pa'a, kuku, papata	lobsters, shrimps, mantis shrimps, true crabs and hermit crabs (Those species not listed as Crustacean MUS).	Crustaceans
	sea squirts	Tunicates
	sponges	Porifera
amu	lace corals	Stylasteridae
amu	hydroid corals	Solanderidae
	segmented worms (Those species not listed as CHCRT).	Annelids
limu	seaweed	Algae
	Live rock	

All other American Samoa coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the American Samoa CHCRT table or are not American Samoa bottomfish, crustacean, precious coral, or western Pacific pelagic MUS.

§ 665.122 [Reserved]

§ 665.123 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the American Samoa fishery management area, fishing for American Samoa coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.124 Permits and fees.

(a) Applicability. Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) Special permit. Any person of the United States fishing for, taking or retaining American Samoa coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) American Samoa coral reef ecosystem MUS in low-use MPAs as defined in § 665.99;

(ii) American Samoa Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) American Samoa coral reef ecosystem MUS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) Transshipment permit. A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the American Samoa coral reef ecosystem management area to land or transship PHCRT, or any American Samoa coral reef ecosystem MUS harvested within low-use MPAs.

(3) Exceptions. The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches American Samoa coral reef ecosystem MUS while fishing for bottomfish management unit species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for American Samoa CHCRT outside of an MPA, who does not retain any incidentally caught American Samoa PHCRT; and

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) Validity. Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) Application. An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator, a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) Issuance.

(i) If an application contains all of the required information, the Regional

Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard (USCG), the fishery management agency of the affected State, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected State fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder, as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) 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 after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and may 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.

(iv) 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 interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may, for good cause, extend any time limit prescribed in this section for a period not to exceed 30 days either upon his

or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.125 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any American Samoa coral reef ecosystem MUS in any low-use MPA as defined in § 665.99 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.124; or

(3) The American Samoa coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any American Samoa coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator;

(2) By means of gear or methods prohibited under § 665.127;

(3) In a low-use MPA without a valid special permit; or

(4) In violation of any permit issued under §§ 665.13, 665.123, or 665.124.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.126 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.127 Allowable gear and gear restrictions.

(a) American Samoa coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;
(2) Spear;
(3) Slurp gun;
(4) Hand net/dip net;
(5) Hoop net for Kona crab;
(6) Throw net;
(7) Barrier net;
(8) Surround/purse net that is attended at all times;
(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);
(10) Crab and fish traps with vessel ID number affixed; and
(11) Remote-operating vehicles/submersibles.

(b) American Samoa coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected State fishery management agency.

§ 665.128 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.124 or that is otherwise established to be fishing for American Samoa coral reef ecosystem MUS in the management area.

(b) Enforcement action.

(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.129–665.139 [Reserved]

§ 665.140 American Samoa Crustacean Fisheries. [Reserved]

§ 665.141 Definitions.

As used in §§ 665.140 through 665.159:

American Samoa crustacean management unit species means the following crustaceans:

Samoan name	English common name	Scientific name
ula	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
papata	slipper lobster	Scyllaridae.
pa'a	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

Crustacean Permit Area 3 (Permit Area 3) includes the EEZ around American Samoa.

§ 665.142 Permits.

(a) Applicability.

(1) The owner of any vessel used to fish for lobster in Permit Area 3 must have a permit issued for that vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 3 must have a permit issued for that vessel.

(b) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) Application. An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.143 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, in Crustacean Permit Area 3, it is unlawful for any person to fish

for, take, or retain deepwater shrimp without a permit issued under § 665.142.

§ 665.144 Notifications.

(a) The operator of any vessel fishing subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (a)(2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.145 At-sea observer coverage.

All fishing vessels subject to §§ 665.140 through 665.145 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.146 665.159 [Reserved]

§ 665.160 American samoa precious coral fisheries. [Reserved]

§ 665.161 Definitions.

As used in §§ 665.160 through 665.169:

American Samoa precious coral management unit species (American Samoa precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

Local name	English common name	Scientific name
Amu piniki-mumu	Pink coral (also known as red coral).	*Corallium secundum, Corallium regale, Corallium laauense.*
Amu auro	Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Amu ofe	Bamboo coral	*Lepidisis olapa, Acanella* spp.
Amu ofe	Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

American Samoa precious coral permit area means the area encompassing the precious coral beds within the U.S. EEZ around American Samoa. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [*Reserved*]

(2) Conditional beds. [*Reserved*]

(3) Refugia. [*Reserved*]

(4) Exploratory Area. Permit Area X–P–AS includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.

§ 665.162 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining American Samoa precious coral MUS in any American Samoa precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.161.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.163 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of American Samoa precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.164.

(2) In refugia specified in § 665.161.

(3) In a bed for which the quota specified in § 665.167 has been attained.

(4) In violation of any permit issued under § 665.13 or § 665.17.

(5) In a bed that has been closed pursuant to §§ 665.166 or 665.169.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.165 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.164 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.165 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Black coral. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.166 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.167 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.167(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) Conditional bed closure. A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) Reserves and reserve release. The quotas for exploratory area X–P–AS will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the American Samoa exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) The American Samoa exploratory permit area X–P–AS has an annual quota of 1,000 kg for all American Samoa precious coral MUS combined with the exception of black corals.

§ 665.168 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.169 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart C—Hawaii Fisheries

§ 665.198 Management area.

The Hawaii fishery management area is the EEZ seaward of the State of Hawaii, including the Main Hawaiian Islands (MHI) and Northwestern Hawaiian Islands (NWHI), with the inner boundary a line coterminous with the seaward boundaries of the State of Hawaii and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

§ 665.199 Area restrictions. [Reserved]

§ 665.200 Hawaii bottomfish and seamount groundfish fisheries. [Reserved]

§ 665.201 Definitions.

As used in §§ 665.200 through 665.219:

Hawaii bottomfish management unit species (Hawaii bottomfish MUS) means the following species:

Local name	English common name	Scientific name
lehi	silver jaw jobfish	*Aphareus rutilans.*
uku	gray jobfish	*Aprion virescens.*
white papio, ulua au kea	giant trevally	*Caranx ignobilis.*
ulua laʻuli	black jack	*Caranx lugubris.*
hāpuʻupuʻu	sea bass	*Epinephalus quernus.*
ehu	red snapper	*Etelis carbunculus.*
onaga, ʻulaʻula koaʻe	longtail snapper	*Etelis coruscans.*
taʻape	blue stripe snapper	*Lutjanus kasmira.*
kalekale	yellowtail snapper	*Pristipomoides auricilla.*
ʻōpakapaka	pink snapper	*Pristipomoides filamentosus.*
kalekale	pink snapper	*Pristipomoides seiboldii.*
gindai	snapper	*Pristipomoides zonatus.*
pig ulua, butaguchi	thicklip trevally	*Pseudocaranx dentex.*
kahala	amberjack	*Seriola dumerili.*

Hawaii restricted bottomfish species fishing year means the year beginning at 0001 HST on September 1 and ending at 2400 HST on August 31 of the next calendar year.

Main Hawaiian Islands non-commercial bottomfish permit means the permit required by § 665.203(a)(2) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any Hawaii bottomfish MUS in the MHI Management Subarea.

Protected species study zone means the waters within 50 nm, as designated by the Regional Administrator pursuant to § 665.208, around the following islands of the NWHI and as measured from the following coordinates:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

Seamount Groundfish means the following species:

Common name	Scientific name
Armorhead	*Pseudopentaceros wheeleri.*
Alfonsin	*Beryx splendens.*
Raftfish	*Hyperoglyphe japonica.*

§ 665.202 Management subareas.

(a) The Hawaii fishery management area is divided into subareas with the following designations and boundaries:

(1) Main Hawaiian Islands means the U.S. EEZ around the Hawaiian Archipelago lying to the east of 161°20′ W. long.

(2) Northwestern Hawaiian Islands means the EEZ around the Hawaiian Archipelago lying to the west of 161°20′ W. long. For the purposes of regulations issued under this subpart, Midway Island is treated as part of the NWHI Subarea.

(i) Ho'omalu Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161°20' W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00′ W. long. and north of 28°00′ N. lat.

(b) The inner boundary of each management subarea is a line coterminous with the seaward boundaries of the State of Hawaii.

(c) The outer boundary of each management subarea is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

§ 665.203 Permits.

(a) Applicability.

(1) Northwestern Hawaiian Islands. The owner of any vessel used to fish for, land, or transship Hawaii bottomfish MUS shoreward of the outer boundary of the NWHI subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. PIRO will not register a single vessel for use with a Ho'omalu Zone permit and a Mau Zone permit at the same time. Mau Zone permits issued before June 14, 1999, became invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (b)(3) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(2) MHI non-commercial. The owner of a vessel that is used for and any person who participates in non-commercial, vessel-based fishing, landing, or transshipment of Hawaii bottomfish MUS in the MHI management subarea is required to obtain an MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License. If one or more persons on a vessel-based bottomfish fishing trip holds an MHI non-commercial permit, then the entire trip is considered non-commercial, and not commercial. However, if any commercial fishing occurs during or as a result of a vessel-based fishing trip, then the fishing trip is considered commercial, and not non-commercial. Charter boat customers are not subject to the requirements of the section.

(b) Submission.

(1) An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(2) Ho'omalu Zone limited access permit. In addition to an application under § 665.13(c), each applicant for a Ho'omalu Zone permit must also submit a supplementary information sheet provided by PIRO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) A copy of landings receipts or other documentation, with a certification from a State or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentages of ownership of the partnership or corporation.

(3) Mau Zone limited access permit. PIRO will not accept applications for a new Mau Zone permit after June 14, 1999. In addition to an application under § 665.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by PIRO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) Copy of State of Hawaii catch report(s) to demonstrate that the permitted vessel had made qualifying landings of bottomfish from the Mau Zone; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentage of ownership of the partnership or corporation.

(c) Sale or transfer of Ho'omalu limited access permits to new vessel owners.

(1) A Ho'omalu zone permit may not be sold or otherwise transferred to a new owner.

(2) A Ho'omalu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Administrator.

(d) Transfer of Ho'omalu Zone limited access permits to replacement vessels.

(1) Upon application by the owner of a permitted vessel, the Regional Administrator will transfer that owner's permit to a replacement vessel owned by that owner, provided that the replacement vessel does not exceed 60 ft (18.3 m) LOA. The replacement vessel must be put into service no later than 12 months after the owner applies for the transfer, or the transfer shall be void.

(2) An owner of a permitted vessel may apply to the Regional Administrator for transfer of that owner's permit to a replacement vessel greater than 60 ft (18.3 m) LOA. The Regional Administrator may transfer the permit upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, or has catching power that does not exceed that of the original vessel, and that the transfer is not inconsistent with the objectives of the program. The Regional Administrator shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) Ho'omalu Zone limited access permit renewal.

(1) A qualifying landing for Ho'omalu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS from the Ho'omalu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho'omalu Zone, of which at least 50 percent by weight was Hawaii bottomfish MUS. A permit is eligible for renewal for the

next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Administrator for a waiver of the landing requirement. If the Regional Administrator finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Administrator may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) Issuance of new Ho'omalu Zone limited access permits. The Regional Administrator may issue new Ho'omalu Zone limited access permits under § 665.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort.

(g) Eligibility for new Ho'omalu Zone limited access permits. When the Regional Administrator has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) Point system.

(i) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more of any of the following types of landings in the NWHI:

(A) Any amount of Hawaii bottomfish MUS, regardless of weight, if made on or before August 7, 1985;

(B) At least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS, if made after August 7, 1985; or

(C) At least 2,500 lb (1,134 kg) of any fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the MHI.

(iii) For any one year, points will be assigned under either paragraph (g)(1)(i) or (g)(1)(ii) of this section, but not under both paragraphs.

(iv) Before the Regional Administrator issues a Ho'omalu zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) Restrictions. An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) Order of issuance. New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Administrator through a lottery.

(4) Notification. The Regional Administrator shall place a notice in the **Federal Register** and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) Eligibility for new Mau Zone limited access permits. (1) PIRO will issue an initial Mau Zone permit to a vessel owner who qualifies for at least three points under the following point system:

(i) An owner who held a Mau Zone permit on or before December 17, 1991, and whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS on or before December 17, 1991, shall be assigned 1.5 points.

(ii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1991, shall be assigned 0.5 point.

(iii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1992, shall be assigned 1.0 point.

(iv) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1993, shall be assigned 1.5 points.

(v) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1994, shall be assigned 2.0 points.

(vi) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1995, shall be assigned 2.5 points.

(vii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1996, shall be assigned 3.0 points.

(viii) Before PIRO issues a Mau Zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) For purposes of this paragraph (h), a ''qualifying landing'' means any amount of Hawaii bottomfish MUS lawfully harvested from the Mau Zone and offloaded for sale. No points shall be assigned to an owner for any qualifying landings reported to the State of Hawaii more than 1 year after the landing.

(3) More than one Mau Zone permit may be issued to an owner of two or more vessels, provided each of the owner's vessels for which a permit will be registered for use has made the required qualifying landings for the owner to be assigned at least three eligibility points.

(4) A Mau Zone permit holder who does not own a vessel at the time initial permits are issued must register the permit for use with a vessel owned by the permit holder within 12 months from the date the permit was issued. In the interim, the permit holder may register the permit for use with a leased or chartered vessel. If within 12 months of initial permit issuance, the permit holder fails to apply to PIRO to register the permit for use with a vessel owned by the permit holder, then the permit shall expire.

(5) For each of paragraphs (h)(1)(i) through (h)(1)(viii) of this section, PIRO shall assign points based on the landings of one permitted vessel to only one owner if the vessel did not have multiple owners during the time frame covered by the subordinate paragraphs. If a vessel had multiple owners during a time frame covered by any of paragraphs (h)(1)(i) through (h)(1)(viii) of this section (including joint owners, partners, or shareholders of a corporate owner), PIRO will assign the points for that subordinate paragraph to a single owner if only one owner submits an application with respect to the landings of that vessel during that time frame. If multiple owners submit separate applications with respect to the same landings of the same vessel during the same time frame, then PIRO shall:

(i) Adhere to any written agreement between the applicants with respect to who among them shall be assigned the aggregate point(s) generated by landings during such time frame(s), or

(ii) If there is no agreement:

(A) Shall issue the applicants a joint permit provided the vessel's landings during such time frames generated at least three points, or

(B) In the event the vessel's landings during such time frame(s) generated less than three points, shall not assign any points generated by the vessel's landings during such time frame(s).

(i) Ownership requirements and registration of Mau Zone limited access permits for use with other vessels.

(1) A Mau Zone permit may be held by an individual, partnership, or corporation. No more than 49 percent of the underlying ownership interest in a Mau Zone permit may be sold, leased, chartered, or otherwise transferred to

another person or entity. If more than 49 percent of the underlying ownership of the permit passes to persons or entities other than those listed in the original permit application supplemental information sheet, then the permit expires and must be surrendered to PIRO.

(2) A Mau Zone permit holder may apply under § 665.13 to PIRO to register the permit for use with another vessel if that vessel is owned by the permit holder, and is no longer than 60 ft (18.3 m).

(3) If a Mau Zone permit holder sells the vessel for which the permit is registered for use, the permit holder must, within 12 months of the date of sale, apply to PIRO to register the permit for use with a vessel owned by the permit holder. If the permit holder has not applied to register a replacement vessel within 12 months, then the permit expires.

(4) If a permitted vessel owned by the permit holder is sold or becomes unseaworthy, the Mau Zone permit with which the vessel was registered may be registered for use with a leased or chartered vessel for a period not to exceed 12 months from the date of registration of the leased or chartered vessel. If by the end of that 12 month period the permit holder fails to apply to PIRO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(j) Mau Zone limited access permit renewal.

(1) A Mau Zone permit will be eligible for renewal if the vessel for which the permit is registered for use made at least five separate fishing trips with landings of at least 500 lb (227 kg) of Hawaii bottomfish MUS per trip during the calendar year. Only one landing of bottomfish MUS per fishing trip to the Mau Zone will be counted toward the landing requirement.

(2) If the vessel for which the permit is registered for use fails to meet the landing requirement of paragraph (j)(1) of this section, the owner may apply to the Regional Administrator for a waiver of the landing requirement. Grounds for a waiver are limited to captain incapacitation, vessel breakdowns, and the loss of the vessel at sea if the event prevented the vessel from meeting the landing requirement. Unprofitability is not sufficient for waiver of the landing requirement.

(3) Failure of the permit holder to register a vessel for use under the permit does not exempt a permit holder from the requirements specified in this paragraph.

(k) Appeals of permit actions.

(1) Except as provided in subpart A of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, or revocation of his or her permit to the Regional Administrator.

(2) In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action appealed, and the reasons therefore, and must be submitted within 30 days of the appealed action. The appellant may request an informal hearing on the appeal.

(3) The Regional Administrator, in consultation with the Council, will decide the appeal in accordance with the FEP and implementing regulations and based upon information relative to the application on file at NMFS and the Council, the summary record kept of any hearing, the hearing officer's recommended decision, if any, and any other relevant information.

(4) 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. The applicant or permit holder may appear personally and/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.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. The Regional Administrator's decision on the application is the final administrative decision of the Department of Commerce, and is effective on the date the Administrator signs the decision.

§ 665.204 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for Hawaii bottomfish or seamount groundfish management unit species using gear prohibited under § 665.206.

(b) Fish for, or retain on board a vessel, Hawaii bottomfish MUS in the Ho'omalu Zone or the Mau Zone without the appropriate permit registered for use with that vessel issued under § 665.13.

(c) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalu Zone permit without completing a protected species workshop conducted by NMFS, as required by § 665.203.

(d) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalu Zone, as required by § 665.205.

(e) Fish within any protected species study zone in the NWHI without notifying the Regional Administrator of the intent to fish in these zones, as required under § 664.205.

(f) Falsify or fail to make or file reports of all fishing activities shoreward of the outer boundary of the MHI management subarea, in violation of § 665.14(a) or (b).

(g) Own a vessel or fish from a vessel that is used to fish non-commercially for any Hawaii bottomfish MUS in the MHI management subarea without either a MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of §§ 665.2 or 665.203(a)(2).

(h) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.210, in the MHI management subarea after a closure of the fishery, in violation of § 665.211.

(i) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in § 665.210, after a closure of the fishery, in violation of § 665.211.

(j) Harvest, possess, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in § 665.210 from a vessel in the MHI management subarea, while holding a MHI non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of § 665.212.

§ 665.205 Notification.

(a) The owner or operator of a fishing vessel subject to § 665.203(a)(1) must inform PIRO at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 665.201. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The operator of a fishing vessel that has taken Hawaii bottomfish MUS in the Ho'omalu Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

§ 665.206 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for Hawaii bottomfish and seamount groundfish management unit species with bottom trawls and bottom set gillnets is prohibited.

(b) Possession of gear. Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.203 or otherwise established to be fishing for Hawaii bottomfish or seamount groundfish management unit species in the management subareas is prohibited.

(c) Poisons and explosives. The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting Hawaii bottomfish and seamount groundfish management unit species is prohibited.

§ 665.207 At-sea observer coverage.

(a) All fishing vessels subject to §§ 665.200 though 665.212 must carry an observer when directed to do so by the Regional Administrator.

(b) PIRO will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice provided pursuant to § 665.205(a). If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor, or a cot, is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(d) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Administrator prior to the vessel's departure from port.

§ 665.208 Protected species conservation.

The Regional Administrator may change the size of the protected species study zones defined in § 665.201 of this subpart:

(a) If the Regional Administrator determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.

(b) After consulting with the Council.

(c) Through notification in the **Federal Register** published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 665.209 Fishing moratorium on Hancock Seamount.

Fishing for Hawaii bottomfish and seamount groundfish management unit species on the Hancock Seamount is prohibited through August 31, 2010.

§ 665.210 Hawaii restricted bottomfish species.

Hawaii restricted bottomfish species means the following species:

Local name	English common name	Scientific name
lehi	silver jaw jobfish	*Aphareus rutilans.*
ehu	squirrelfish snapper	*Etelis carbunculus.*
onaga	longtail snapper	*Etelis coruscans.*
opakapaka	pink snapper	*Pristipomoides filamentosus.*
kalekale	snapper	*Pristipomoides sieboldii.*
gindai	snapper	*Pristipomoides zonatus.*
hapu'upu'u	sea bass	*Epinephelus quernus.*

§ 665.211 Total Allowable Catch (TAC) limit.

(a) TAC limits will be set annually for the fishing year by NMFS, as recommended by the Council, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing.

(b) The Regional Administrator shall publish a notice indicating the annual TAC limit in the **Federal Register** by August 31 of each year, and shall use other means to notify permit holders of the TAC limit for the year.

(c) When the TAC limit specified in this section is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the **Federal Register,** until the end of the fishing year in which the TAC is reached.

(d) On and after the date specified in § 665.211(c), no person may fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.210 in the MHI management subarea, except as otherwise allowed in this section.

(e) On and after the date specified in § 665.211(c), no person may sell or offer for sale Hawaii Restricted Bottomfish Species as specified in § 665.210, except as otherwise authorized by law.

(f) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

§ 665.212 Non-commercial bag limits.

No more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species as specified in § 665.210, may be harvested, possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the MHI management subarea. Charter boat customers are also subject to the bag limit.

§§ 665.213–665.219 [Reserved]

§ 665.220 Hawaii coral reef ecosystem fisheries. [Reserved]

§ 665.221 Definitions.

As used in §§ 665.220 through 665.239:

Hawaii coral reef ecosystem management unit species (Hawaii coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic

(post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

HAWAII—CURRENTLY HARVESTED CORAL REEF TAXA

Family name	Local name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	na'ena'e	orange-spot surgeonfish	*Acanthurus olivaceus.*
	pualu	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	manini	convict tang	*Acanthurus triostegus.*
	palani	eye-striped surgeonfish	*Acanthurus dussumieri.*
	maiko	blue-lined surgeon	*Acanthurus nigroris.*
	maiko, maikoiko	whitebar surgeonfish	*Acanthurus leucopareius.*
		whitecheek surgeonfish	*Acanthurus nigricans.*
	'api	white-spotted surgeonfish	*Acanthurus guttatus.*
	Pualu	ringtail surgeonfish	*Acanthurus blochii.*
	mai'i'i	brown surgeonfish	*Acanthurus nigrofuscus.*
	kole	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	NA	striped bristletooth	*Ctenochaetus striatus.*
	kala	bluespine unicornfish	*Naso unicornus.*
	kalalei, umaumalei	orangespine unicornfish	*Naso lituratus.*
Acanthuridae (Surgeonfishes)	kala holo	black tongue unicornfish	*Naso hexacanthus.*
	kala	whitemargin unicornfish	*Naso annulatus.*
	kala lolo	spotted unicornfish	*Naso brevirostris.*
		gray unicornfish	*Naso caesius.*
	lau'ipala	yellow tang	*Zebrasoma flavescens.*
Balistidae (Triggerfish)	humuhumu hi'ukole	pinktail triggerfish	*Melichthys vidua.*
	humuhumu 'ele'ele	black triggerfish	*Melichthys niger.*
	humuhumu nukunuku apua'a	picassofish	*Rhinecanthus aculeatus.*
		bridled triggerfish	*Sufflamen fraenatum.*
Carangidae (Jacks)	akule, hahalu	bigeye scad	*Selar crumenophthalmus.*
	'opelu, 'opelu mama	mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)	manō	grey reef shark	*Carcharhinus amblyrhynchos.*
	manō	galapagos shark	*Carcharhinus galapagensis.*
	manō	blacktip reef shark	*Carcharhinus melanopterus.*
	manō lalakea	whitetip reef shark	*Triaenodon obesus.*
Holocentridae (Solderfish/Squirrelfish.	menpachi, 'u'u	bigscale soldierfish	*Myripristis berndti.*
	menpachi, 'u'u	brick soldierfish	*Myripristis amaena.*
	menpachi, 'u'u	yellowfin soldierfish	*Myripristis chryseres.*
	menpachi, 'u'u	pearly soldierfish	*Myripristis kuntee.*
	'ala'ihi	file-lined squirrelfish	*Sargocentron microstoma.*
	'ala'ihi	crown squirrelfish	*Sargocentron diadema.*
	'ala'ihi	peppered squirrelfish	*Sargocentron punctatissimum.*
	'ala'ihi	blue-lined squirrelfish	*Sargocentron tiere.*
	'ala'ihi	hawaiian squirrelfish	*Sargocentron xantherythrum.*
	'ala'ihi	saber or long jaw squirrelfish	*Sargocentron spiniferum.*
	'ala'ihi	spotfin squirrelfish	*Neoniphon* spp.
Kuhliidae (Flagtails)	'aholehole	Hawaiian flag-tail	*Kuhlia sandvicensis.*
Kyphosidae (Rudderfish)	nenue	rudderfish	*Kyphosus biggibus.*
	nenue	rudderfish	*Kyphosus cinerascens.*
	nenue	rudderfish	*Kyphosus vaigiensis.*
Labridae (Wrasses)	'a'awa	saddleback hogfish	*Bodianus bilunulatus.*
	po'ou	ring-tailed wrasse	*Oxycheilinus unifasciatus.*
	laenihi, nabeta	razor wrasse	*Xyrichtys pavo.*
	kupoupou	cigar wrasse	*Cheilio inermis.*
	ho'u	surge wrasse	*Thalassoma purpureum.*
		red ribbon wrasse	*Thalassoma quinquevittatum.*
		sunset wrasse	*Thalassoma lutescens.*
		rockmover wrasse	*Novaculichthys taeniourus.*
Mullidae (Goatfishes)	weke	yellow goatfish	*Mulloidichthys* spp.
	weke nono	orange goatfish	*Mulloidichthys pfleugeri.*
	weke'ula	yellowfin goatfish	*Mulloidichthys vanicolensis.*
	weke'a or weke a'a	yellowstripe goatfish	*Mulloidichthys flavolineatus.*
	kumu, moano	banded goatfish	*Parupeneus* spp.
	munu	doublebar goatfish	*Parupeneus bifasciatus.*
	moano kea, moano kale	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	malu	side-spot goatfish	*Parupeneus pleurostigma.*
	moano	multi-barred goatfish	*Parupeneus multifaciatus.*
	weke pueo	bandtail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	'ama'ama	stripped mullet	*Mugil cephalus.*
	uouoa	false mullet	*Neomyxus leuciscus.*
Muraenidae (Moray eels)	puhi paka	yellowmargin moray eel	*Gymnothorax flavimarginatus.*
	puhi	giant moray eel	*Gymnothorax javanicus.*

HAWAII—CURRENTLY HARVESTED CORAL REEF TAXA—Continued

Family name	Local name	English common name	Scientific name
	puhi laumilo	undulated moray eel	*Gymnothorax undulatus.*
	puhi	dragon eel	*Enchelycore pardalis.*
Octopodidae (Octopus)	he‘e	octopus	*Octopus cyanea.*
	mauli, tako he‘e, tako	octopus	*Octopus ornatus.*
Polynemidae	moi	threadfin	*Polydactylus sexfilis.*
Priacanthidae (Big-eyes)	‘aweoweo	glasseye	*Heteropriacanthus cruentatus.*
	‘aweoweo	bigeye	*Priacanthus hamrur.*
Scaridae (Parrotfish)	uhu, palukaluka	parrotfish	*Scarus* spp.
	panuhunuhu	stareye parrotfish	*Calotomus carolinus.*
Sphyraenidae (Barracuda)	kawele‘a, kaku	Heller’s barracuda	*Sphyraena helleri.*
	kaku	great barracuda	*Sphyraena barracuda.*
Turbinidae		green snails turban shells	*Turbo* spp.
Zanclidae	kihikihi	moorish idol	*Zanclus cornutus.*
Chaetodontidae	kikakapu	butterflyfish	*Chaetodon auriga.*
	kikakapu	raccoon butterflyfish	*Chaetodon lunula.*
	kikakapu	saddleback butterflyfish	*Chaetodon ephippium.*
Sabellidae		featherduster worm	

HAWAII—POTENTIALLY HARVESTED CORAL REEF TAXA

Local name	English common name	Scientific name
hinalea	wrasses (Those species not listed as CHCRT)	*Labridae.*
manō	sharks (Those species not listed as CHCRT)	*Carcharhinidae, Sphyrnidae.*
hihimanu	rays and skates	*Dasyatididae, Myliobatidae.*
roi, hapu‘upu ‘u	groupers, seabass (Those species not listed as CHCRT or in BMUS).	*Serrandiae.*
	tilefishes	*Malacanthidae.*
dobe, kagami, pa‘opa‘o, papa, omaka, ulua.	jacks and scads (Those species not listed as CHCRT or in BMUS).	*Carangidae.*
‘u‘u	solderfishes and squirrelfishes (Those species not listed as CHCRT).	*Holocentridae.*
weke, moano, kumu	goatfishes (Those species not listed as CHCRT)	*Mullidae.*
na‘ena ‘e, maikoiko	surgeonfishes (Those species not listed as CHCRT)	*Acanthuridae.*
	remoras	*Echeneidae.*
puhi	eels (Those species not listed as CHCRT)	*Muraenidae, Congridae, Ophichthidae.*
‘upapalu	cardinalfishes	*Apogonidae.*
	herrings	*Clupeidae.*
nehu	anchovies	*Engraulidae.*
	coral crouchers	*Caracanthidae.*
‘o‘opu	gobies	*Gobiidae.*
to‘au	snappers (Those species not listed as CHCRT or in BMUS).	*Lutjanidae.*
nunu	trumpetfish	*Aulostomus chinensis.*
nunu peke	cornetfish	*Fistularia commersoni.*
kihikihi	moorish Idols	*Zanclidae.*
kikakapu	butterflyfishes	*Chaetodontidae.*
	angelfishes	*Pomacanthidae.*
mamo	damselfishes	*Pomacentridae.*
nohu, okoze	scorpionfishes, lionfishes	*Scorpaenidae.*
pa o’o	blennies	*Blenniidae.*
kaku	barracudas (Those species not listed as CHCRT)	*Sphyraenidae.*
	sandperches	*Pinguipedidae.*
paki‘i	flounders and soles	*Bothidae, Soleidae, Pleurnectidae.*
makukana	trunkfishes	*Ostraciidae.*
humu humu	trigger fishes (Those species not listed as CHCRT)	*Balistidae.*
nenue	rudderfishes (Those species not listed as CHCRT)	*Kyphosidae.*
po‘opa‘a	hawkfishes (Those species not listed as CHCRT)	*Cirrhitidae.*
‘o‘opu hue, fugu	puffer fishes and porcupine fishes	*Tetradontidae.*
	frogfishes	*Antennariidae.*
	pipefishes and seahorses	*Syngnathidae.*
namako, lole, wana	sea cucumbers and sea urchins	*Echinoderms.*
	(Those species not listed as CHCRT)	*Mollusca.*
ko‘a	ahermatypic corals	*Azooxanthellates.*
ko‘a	mushroom corals	*Fungiidae.*
ko‘a	small and large coral polyps	
	soft corals and gorgonians.	
	anemones	*Actinaria.*
	soft zoanthid corals	*Zoanthinaria.*
	hydroid corals	*Solanderidae.*
ko‘a	lace corals	*Stylasteridae.*

HAWAII—POTENTIALLY HARVESTED CORAL REEF TAXA—Continued

Local name	English common name	Scientific name
ula, a'ama, mo'ala, 'alakuma	lobsters, shrimps, mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS).	*Crustaceans.*
		Hydrozoans, Bryzoans.
	black-lip pearl oyster	*Pinctada margaritifera.*
	other clams	*Other Bivalves.*
	sea squirts	*Tunicates.*
	sponges	*Porifera.*
tako, he'e	octopi	*Cephalopods.*
	sea snails	*Gastropoda.*
	sea slugs	*Opistobranchs.*
limu	seaweed	*Algae.*
		Live rock.
	segmented worms (Those species not listed as CHCRT).	*Annelids.*

All other Hawaii coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the Hawaii CHCRT table or are not Hawaii bottomfish, crustacean, precious coral, seamount groundfish or western Pacific pelagic MUS.

§ 665.222 Management area.

The Hawaii coral reef ecosystem management area is as follows:

(a) The U.S. EEZ around the Hawaiian Archipelago lying to the east of 160°50′ W. long.

(b) The inner boundary of the management area is the seaward boundary of the State of Hawaii.

(c) The outer boundary of the management area is the outer boundary of the U.S. EEZ.

§ 665.223 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Hawaii coral reef ecosystem management area, fishing for Hawaii coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.224 Permits and fees.

(a) Applicability. Unless otherwise specified in this subpart, § 665.13 applies to Hawaii coral reef ecosystem permits.

(1) Special permit. Any person of the United States fishing for, taking or retaining Hawaii coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Hawaii coral reef ecosystem MUS in low-use MPAs as defined in § 665.199;

(ii) Hawaii Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) Hawaii coral reef ecosystem MUS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) Transshipment permit. A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Hawaii coral reef ecosystem management area to land or transship PHCRT, or any Hawaii coral reef ecosystem MUS harvested within low-use MPAs.

(3) Exceptions. The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches Hawaii coral reef ecosystem MUS while fishing for bottomfish management unit species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for Hawaii CHCRT outside of an MPA, who does not retain any incidentally caught Hawaii PHCRT; and

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) Validity. Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) Application. An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved, sold for food, ornamental, research, or other use, and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(3) Issuance.

(i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard, the fishery management agency of the affected State, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected State fishery management agency concerning the permit application and will receive their recommendations for

approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to, issues related to spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based on information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) 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 after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/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.

(iv) 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 interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

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

§ 665.225 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any Hawaii coral reef ecosystem MUS in any low-use MPA as defined in § 665.199 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.224; or

(3) The Hawaii coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Hawaii coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.227.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.224.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.226 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Hawaii coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.227 Allowable gear and gear restrictions.

(a) Hawaii coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;
(2) Spear;
(3) Slurp gun;
(4) Hand net/dip net;
(5) Hoop net for Kona crab;
(6) Throw net;
(7) Barrier net;
(8) Surround/purse net that is attended at all times;
(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);
(10) Crab and fish traps with vessel ID number affixed; and
(11) Remote-operating vehicles/submersibles.

(b) Hawaii coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for Hawaii coral reef ecosystem MUS in the Hawaii management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected State fishery management agency.

§ 665.228 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.224 or that is otherwise established to be fishing for Hawaii coral reef ecosystem MUS in the Hawaii management area.

(b) Enforcement action.

(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the Hawaii coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the Hawaii coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.229–665.239 [Reserved]

§ 665.240 Hawaii crustacean fisheries. [Reserved]

§ 665.241 Definitions.

As used in §§ 665.240 through 665.259:

Hawaii crustacean management area is divided into the following areas:

(1) *Crustacean Permit Area 1 (Permit Area 1)* means the EEZ around the NWHI.

(2) *Crustacean Permit Area 2 (Permit Area 2)* means the EEZ around the MHI.

(3) *Crustacean Permit Area 1 VMS Subarea* means an area within the EEZ around the NWHI 50 nm from the center geographical positions of the islands and reefs in the NWHI as follows:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

The remainder of the VMS subarea is delimited by parallel lines tangent to and connecting the 50-nm areas around the following: From Nihoa Island to Necker Island; from French Frigate Shoals to Gardner Pinnacles; from Gardner Pinnacles to Maro Reef; from Laysan Island to Lisianski Island; and from Lisianski Island to Pearl and Hermes Reef.

Hawaii crustacean management unit species (Hawaii crustacean MUS) means the following crustaceans:

Local name	English common name	Scientific name
ula	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*

Local name	English common name	Scientific name
ula papapa	slipper lobster	Scyllaridae.
papa'i kua loa	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under § 665.242, and any person who has notified the Regional Administrator of his or her interest in the procedures and decisions described in § 665.248, and who has specifically requested to be considered an ''interested party.''

Lobster grounds refers, singularly or collectively, to the following four areas in Crustacean Permit Area 1 that shall be used to manage the lobster fishery:

(1) Necker Island Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24°00′ N. lat., 164°00′ W. long.; 23°00′ N. lat., 164°00′ W. long.; and 23°00′ N. lat., 165°00′ W. long.

(2) Gardner Pinnacles Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20′ N. lat., 168°20′ W. long.; 25°20′ N. lat., 167°40′ W. long.; 24°20′ N. lat., 167°40′ W. long.; and 24°20′ N. lat., 168°20′ W. long.

(3) Maro Reef Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40′ N. lat., 171°00′ W. long.; 25°40′ N. lat., 170°20′ W. long.; 25°00′ N. lat., 170°20′ W. long.; and 25°00′ N. lat., 171°00′ W. long.

(4) General NWHI Lobster Grounds—all waters within Crustacean Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

§ 665.242 Permits.

(a) Applicability.

(1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 must have a permit issued for such a vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Areas 1 or 2 must have a permit issued for that vessel.

(4) Harvest of Hawaii crustacean MUS within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

(b) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) Application. An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) Lobster Limited Access Permit Requirements.

(1) A lobster limited access permit is valid for fishing only in Crustacean Permit Area 1.

(2) Only one permit will be assigned to any vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

(4) A maximum of 15 limited access permits can be valid at any time.

(e) Transfer or sale of limited access permits.

(1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, PIRO must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 665.13. The transferred permit is not valid until this process is completed.

(f) Replacement of a vessel covered by a limited access permit. A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

(g) Issuance of limited access permits to future applicants.

(1) The Regional Administrator may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Administrator has determined that limited access permits may be issued to new persons, a notice shall be placed in the **Federal Register**, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the **Federal Register** notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Administrator through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Administrator shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50 percent share in the vessel that the permit would cover.

§ 665.243 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 600.725 and § 665.15, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 665.242.

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 665.245.

(iii) From closed areas for lobsters, as specified in § 665.251.

(iv) During a closed season, as specified in § 665.250.

(v) After the closure date, as specified in § 665.252, and until the fishery opens again in the following calendar year.

(vi) In a lobster grounds after closure of that grounds as specified in § 665.252(b).

(2) Fail to report before landing or offloading as specified in § 665.244.

(3) Fail to comply with any protective measures implemented under § 665.248.

(4) Leave a trap unattended in the Hawaii crustacean management area except as provided in § 665.245.

(5) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 665.245.

(6) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 665.252, until the fishery opens again the following year.

(7) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Administrator for inspection and copying any records that must be made available in accordance with § 665.14(g)(2).

(8) Possess on a fishing vessel that has a limited access permit issued under § 665.242 any lobster trap in Crustacean Permit Area 1 when fishing for lobster is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, or except as allowed under § 665.245(a)(7).

(9) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustacean Permit Area 1 VMS Subarea when fishing for lobsters is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, except as allowed under § 665.245(a)(8).

(10) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same while engaged in the Permit Area 1 fishery; or to move or remove a VMS unit while engaged in the Permit Area 1 fishery without first notifying the Regional Administrator.

(11) Make a false statement, oral or written, to the Regional Administrator or an authorized officer, regarding the certification, use, operation, or maintenance of a VMS unit used in the fishery.

(12) Fail to allow an authorized officer to inspect and certify a VMS unit used in the fishery.

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 665.252(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 665.245; or

(ii) During a closed season, as specified in § 665.250(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 that is less than the minimum size specified in § 665.249.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 665.249.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 665.249.

(5) Possess on a fishing vessel that has a permit for Permit Area 2 issued under this subpart any lobster trap in Permit Area 2 when fishing for lobster in the MHI is prohibited during the months of May, June, July, and August.

(c) In Crustacean Permit Areas 1 and 2, it is unlawful for any person to fish for, take, or retain deepwater shrimp without a permit issued under § 665.242.

§ 665.244 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraph (a) of this section at least 30 days prior to the opening of the fishing season.

§ 665.245 Gear restrictions.

(a) Permit Area 1.

(1) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(2) The smallest opening of an entry way of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches (16.5 cm) in diameter to pass from outside the trap to inside the trap.

(3) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(i) Panels must have at least four unobstructed circular holes no smaller than 67 mm in diameter, with centers at least 82 mm apart.

(ii) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(iii) Panels must be placed opposite one another in each trap.

(4) A vessel fishing for or in possession of lobster in any permit area may not have on board the vessel any trap that does not meet the requirements of paragraphs (a)(1), (2), and (3) of this section.

(5) A maximum of 1,200 traps per vessel may be maintained on board or in the water, provided that no more than 1,100 assembled traps are maintained on board or in the water. If more than 1,100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(6) Traps shall not be left unattended in any permit area, except in the event of an emergency, in which case the vessel operator must notify the SAC of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port.

(7) A vessel whose owner has a limited access permit issued under this

subpart and has an operating VMS unit certified by NMFS may enter Crustacean Permit Area 1 with lobster traps on board on or after June 25, but must remain outside the Crustacean Permit Area 1 VMS Subarea until the NWHI lobster season opens on July 1.

(8) A vessel whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS may transit Crustacean Permit Area 1, including Crustacean Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 665.252, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

(9) The operator of a permitted vessel must notify the Regional Administrator or an authorized officer no later than June 15 of each year if the vessel will use a VMS unit in the fishery and allow for inspection and certification of the unit.

(b) Permit Area 2. Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

§ 665.246 Gear identification.

In Permit Area 1, the vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§ 665.247 At-sea observer coverage.

All fishing vessels subject to §§ 665.240 though 665.252 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§ 665.248 Monk seal protective measures.

(a) General. This section establishes a procedure that will be followed if the Regional Administrator receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) Notification. Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Administrator will notify all interested parties of the facts known about the incident. The Regional Administrator will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) Investigation.

(1) The Regional Administrator will investigate the incident reported and will attempt to:

(i) Verify that the incident occurred.

(ii) Determine the extent of the harm to the monk seal population.

(iii) Determine the probability of a similar incident recurring.

(iv) Determine details of the incident such as:

(A) The number of animals involved.

(B) The cause of the mortality.

(C) The age and sex of the dead animal(s).

(D) The relationship of the incident to the reproductive cycle, for example, breeding season (March–September), non-breeding season (October–February).

(E) The population estimates or counts of animals at the island where the incident occurred.

(F) Any other relevant information.

(v) Discover and evaluate any extenuating circumstances.

(vi) Evaluate any other relevant factors.

(2) The Regional Administrator will make the results of the investigation available to the interested parties and request their advice and comments.

(d) Determination of relationship. The Regional Administrator will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Administrator will:

(1) Advise the interested parties of his or her conclusion and the facts upon which it is based.

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions for appropriate protective measures.

(e) Determination of response. The Regional Administrator will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) Action by the Regional Administrator. If the Regional Administrator decides that protective measures are necessary and appropriate, the Regional Administrator will prepare a document that describes the incident, the protective measures proposed, and the reasons for the protective measures; provide it to the interested parties; and request their comments.

(g) Implementation of protective measures.

(1) If, after completing the steps described in paragraph (f) of this section, the Regional Administrator concludes that protective measures are necessary and appropriate, the Regional Administrator will recommend the protective measures to the Assistant Administrator and provide notice of this recommendation to the Chairman of the Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Assistant Administrator concurs with the Regional Administrator's recommendation, NMFS will publish an action in the **Federal Register** that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) Notification of ''no action.'' If, at any point in the process described in this section, the Regional Administrator or Assistant Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) Effective dates.

(1) The protective measures will take effect 10 days after the date of publication in the **Federal Register**.

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the Hawaii FEP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the ESA;

(iii) Until the Assistant Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the **Federal Register** notification, not to exceed 3 months. The measures may be renewed for 3 months after again following procedures in paragraphs (b) through (g) of this section.

(j) Repeal.

(1) If the Assistant Administrator decides that protective measures may no longer be necessary for the protection of monk seals, the Assistant Administrator will notify the interested parties of this preliminary decision and the facts upon which it is based. The Assistant Administrator will request advice on the proposed repeal of the protective measures.

(2) The Assistant Administrator will consider all relevant information obtained by the Regional Administrator or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Assistant Administrator decides to repeal the protective measures—

(i) Interested parties will be notified of the decision; and

(ii) Notification of repeal and the reasons for the repeal will be published in the **Federal Register**.

(k) Monk seal emergency protective measures.

(1) Determination of emergency. If, at any time during the process described in paragraphs (a) through (j) of this section, the Regional Administrator determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, the Regional Administrator will—

(i) Notify the interested parties of this determination and request their immediate advice and comments.

(ii) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Assistant Administrator.

(2) Implementation of emergency measures. If the Assistant Administrator agrees with the recommendation for emergency action—

(i) The Regional Administrator will determine the appropriate emergency protective measures.

(ii) NMFS will publish the emergency protective measures in the **Federal Register**.

(iii) The Regional Administrator will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Administrator knows are on the fishing grounds also will be notified by radio.

(3) Effective dates.

(i) Emergency protective measures are effective against a permit holder at 12:01 a.m., local time, of the day following the day the permit holder receives actual notice of the measures.

(ii) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(iii) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 665.252.

§ 665.249 Lobster size and condition restrictions in Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 1 to this part).

(b) Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

(c) A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

§ 665.250 Closed seasons.

(a) Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

(b) Lobster fishing is prohibited in Permit Area 2 during the months of May, June, July, and August.

§ 665.251 Closed areas.

All lobster fishing is prohibited:

(a) Within 20 nm of Laysan Island.

(b) Within the EEZ landward of the 10-fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 665.252 Harvest limitation program.

(a) General. Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) Harvest guideline.

(1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FEP after consultation with the Council.

(2) NMFS shall publish a document indicating the annual harvest guideline in the **Federal Register** by February 28 of each year and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 665.245(a)(8).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the overall harvest guideline for Crustacean Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustacean Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

(c) Monitoring and adjustment. The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Administrator shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

§§ 665.253–665.259 [Reserved]

§ 665.260 Hawaii precious coral fisheries. [Reserved]

§ 665.261 Definitions.

As used in §§ 665.260 through 665.270:

Hawaii precious coral management unit species (Hawaii precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.

English common name	Scientific name
Black coral	*Antipathes griggi, Antipathes grandis, Antipathes ulex.*

Hawaii precious coral permit area means the area encompassing the precious coral beds within the EEZ around Hawaii. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds.

(i) Makapu'u (Oahu), Permit Area E–B–1, includes the area within a radius of 2.0 nm of a point at 21°18.0′ N. lat., 157°32.5′ W. long.

(ii) Au'au Channel (Maui), Permit Area E–B–2, includes the area west and south of a point at 21°10′ N. lat., 156°40′ W. long., and east of a point at 21° N. lat., 157° W. long., and west and north of a point at 20°45′ N. lat., 156°40′ W. long.

(2) Conditional beds.

(i) Keahole Point (Hawaii), Permit Area C–B–1, includes the area within a radius of 0.5 nm of a point at 19°46.0′ N. lat., 156°06.0′ W. long.

(ii) Kaena Point (Oahu), Permit Area C–B–2, includes the area within a radius of 0.5 nm of a point at 21°35.4′ N. lat., 158°22.9′ W. long.

(iii) Brooks Bank, Permit Area C–B–3, includes the area within a radius of 2.0 nm of a point at 24°06.0′ N. lat., 166°48.0′ W. long.

(iv) 180 Fathom Bank, Permit Area C–B–4, N.W. of Kure Atoll, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 178°53.4′ W. long.

(3) Refugia. Westpac Bed, Permit Area R–1, includes the area within a radius of 2.0 nm of a point at 23°18′ N. lat., 162°35′ W. long.

(4) Exploratory areas. Permit Area X–P–H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

§ 665.262 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Hawaii precious coral MUS in any Hawaiian Archipelago precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.261.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.263 Prohibitions.

In addition to the general prohibitions specified in 50 CFR § 600.725 and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any Hawaii precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of Hawaii precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.264.

(2) In refugia specified in § 665.261.

(3) In a bed for which the quota specified in § 665.269 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.268 or 665.270.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.265 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.264 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.265 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Black coral. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.266 Area restrictions.

Fishing for coral on the WestPac Bed is not allowed. The specific area closed to fishing is all waters within a 2-nm radius of the midpoint of 23°18.0′ N. lat., 162°35.0′ W. long.

§ 665.267 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapu'u and Au'au Channel Beds, which have a two-year fishing period that begins July 1 and ends June 30, two years later.

§ 665.268 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapu'u Bed or Au'au Channel Bed, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.269 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.269(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) Conditional bed closure. A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) Reserves and reserve release. The quotas for exploratory area X–P–H will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Hawaii exploratory areas will equal the quota minus the

estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of Hawaii precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) Quotas for precious coral permit areas.

Type of coral bed	Name of coral bed	Harvest quota in kilograms	Number of years
Established beds	Au'au Channel	Black: 5,000	2
	Makapu'u	Pink: 2,000	2
		Gold: 0 (zero)	
		Bamboo: 500	2
Conditional Beds	180 Fathom Bank	Pink: 222	1
		Gold: 67	1
		Bamboo: 56	1
	Brooks Bank	Pink: 444	1
		Gold: 133	1
		Bamboo: 111	1
	Kaena Point	Pink: 67	1
		Gold: 20	1
		Bamboo: 17	1
	Keahole Point	Pink: 67	1
		Gold: 20	1
		Bamboo: 17	1
Refugia	Westpac	All: 0 (zero)	
Exploratory Area	Hawaii	1,000 per area (all species combined except black corals)	1

Notes:
1. No fishing for coral is authorized in refugia.
2. A moratorium on gold coral harvesting is in effect through June 30, 2013.

§ 665.270 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart D—Mariana Archipelago Fisheries

§ 665.398 Management area.

The Mariana fishery management area is the EEZ seaward of Guam and CNMI with the inner boundary a line coterminous with the seaward boundaries of Guam and CNMI and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.399 Area restrictions.

Anchoring by all fishing vessels over 50 ft (15.25 m) LOA is prohibited in the U.S. EEZ seaward of Guam west of 144°30′ E. long. except in the event of an emergency caused by ocean conditions or by a vessel malfunction that can be documented.

§ 665.400 Mariana bottomfish fisheries. [Reserved]

§ 665.401 Definitions.

As used in §§ 665.400 through 665.419:

CNMI commercial bottomfish permit means the permit required by § 665.404(a)(2) to engage in commercial fishing for Mariana bottomfish MUS in the CNMI management subarea.

Guam bottomfish permit means the permit required by § 665.404(a)(1) to use a large vessel to fish for, land, or transship Mariana bottomfish MUS shoreward of the outer boundary of the Guam subarea of the Mariana fishery management area.

Mariana bottomfish management unit species (Mariana bottomfish MUS) means the following fish:

Local name Chamorro/Carolinian	English common name	Scientific name
lehi/maroobw	red snapper, silvermouth	*Aphareus rutilans.*
gogunafon/aiwe	gray snapper, jobfish	*Aprion virescens.*
tarakitu/etam	Giant trevally, jack	*Caranx ignobilis.*
tarakiton attelong/orong	Black trevally, jack	*Caranx lugubris.*
gadao/meteyil	blacktip grouper	*Epinephelus fasciatus.*
bueli/bwele	lunartail grouper	*Variola louti.*
buninas agaga'/falaghal moroobw	red snapper	*Etelis carbunculus.*
abuninas/taighulupegh	red snapper	*Etelis coruscans.*
mafuti/atigh	redgill emperor	*Lethrinus rubrioperculatus.*
mafuti/loot	Ambon emperor	*Lethrinus amboinensis.*
funai/saas	blueline snapper	*Lutjanus kasmira.*
buninas/falaghal-maroobw	yellowtail snapper	*Pristipomoides auricilla.*
buninas or pakapaka/falaghal-maroobw	pink snapper	*Pristipomoides filamentosus.*
buninas/falaghal-maroobw	yelloweye snapper	*Pristipomoides flavipinnis.*
	pink snapper	*Pristipomoides seiboldii.*
buninas rayao amariyu/falaghal-maroobw	snapper	*Pristipomoides zonatus.*

Local name Chamorro/Carolinian	English common name	Scientific name
tarakiton tadong/meseyugh	amberjack	*Seriola dumerili.*

§ 665.402 Management subareas.

The Mariana fishery management area is divided into bottomfish management subareas with the following designations and boundaries:

(a) *Guam Management Subarea* means the EEZ seaward of the Territory of Guam, with the inner boundary defined as a line coterminous with the seaward boundary of the Territory of Guam.

(b) *CNMI Management Subarea* means the EEZ seaward of the CNMI. The CNMI Management Subarea is further divided into subareas with the following designations and boundaries:

(1) *CNMI Inshore Area* means that portion of the EEZ within 3 nautical miles from the shoreline of the CNMI.

(2) *CNMI Offshore Area* means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries, except that the outer boundary of the CNMI Inshore Area is 3 nautical miles from the shoreline. The boundary between the fishery management areas of Guam and CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI. CNMI and Guam management subareas are divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.403 Bottomfish fishery area management.

(a) *Guam large vessel bottomfish prohibited area (Area GU–1).* A large vessel of the United States, as defined in § 665.12, may not be used to fish for Mariana bottomfish MUS in the Guam large vessel bottomfish prohibited area, defined as the U.S. EEZ waters surrounding Guam that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
GU–1–A	14°16′	144°17′.
GU–1–B	13°50′	143°52′.
GU–1–C	13°17′	143°46′.
GU–1–D	12°50′	143°54′.
GU–1–E	12°30′	144°14′.
GU–1–F	12°25′	144°51′.
GU–1–G	12°57′	145°33′.
GU–1–H	13°12′	145°43′.
GU–1–I	13°29′44″	145°48′27″.
GU–1–A	14°16′	144°17′.

(b) *CNMI medium and large vessel bottomfish prohibited areas.* A medium or large vessel of the United States, as defined in § 665.12, may not be used to fish commercially for Mariana bottomfish MUS in the following areas:

(1) *CNMI Southern Islands (Area NM–1).* The CNMI Southern Islands prohibited area is defined as the waters of the U.S. EEZ surrounding CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM–1–A	14°9′	144°15′
NM–1–B	16°10′47″	145°12′
NM–1–C	16°10′47″	146°53′
NM–1–D	14°48′	146°33′
NM–1–E	13°27′	145°43′
NM–1–A	14°9′	144°15′

(2) *CNMI Alamagan Island (Area NM–2).* The CNMI Alamagan Island prohibited area is defined as the waters of the U.S. EEZ surrounding CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM–2–A	17°26′	145°40′
NM–2–B	17°46′	145°40′
NM–2–C	17°46′	146°00′
NM–2–D	17°26′	146°00′
NM–2–A	17°26′	145°40′

§ 665.404 Permits.

(a) Applicability.

(1) Guam large vessel. The owner of any large vessel used to fish for, land, or transship Mariana bottomfish MUS shoreward of the outer boundary of the Guam subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) Commonwealth of the Northern Mariana Islands (CNMI) commercial. The owner of any vessel used to commercially fish for, transship, receive, or land Mariana bottomfish MUS shoreward of the outer boundary of the CNMI management subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(b) Submission. An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

§ 665.405 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for Mariana bottomfish MUS using gear prohibited under § 665.406.

(b) Use a large vessel that does not have a valid Guam bottomfish permit registered for use with that vessel to fish for, land, or transship Mariana bottomfish management unit species shoreward of the outer boundary of the Guam management subarea of the bottomfish fishery management area in violation of § 665.404(a).

(c) Use a large vessel to fish for Mariana bottomfish MUS within the Guam large vessel bottomfish prohibited area, as defined in § 665.403(a).

(d) Land or transship, shoreward of the outer boundary of the Guam management subarea of the bottomfish fishery management area, Mariana bottomfish MUS that were harvested in violation of § 665.405(c).

(e) Use a vessel to fish commercially for Mariana bottomfish MUS shoreward of the outer boundary of the CNMI management subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.404(a)(2).

(f) Use a medium or large vessel, as defined in § 665.12, to fish for Mariana bottomfish MUS within the CNMI medium and large vessel bottomfish prohibited areas, as defined in § 665.403(b).

(g) Retain, land, possess, sell, or offer for sale, shoreward of the outer boundary of the CNMI management subarea, Mariana bottomfish MUS that were harvested in violation of § 665.405(f), except that Mariana bottomfish MUS that are harvested legally may be transferred to a receiving vessel shoreward of the outer boundary of the CNMI medium and large vessel bottomfish prohibited area as defined in § 665.403(b).

(h) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(b) when using a vessel to engage in commercial fishing for Mariana bottomfish MUS shoreward

of the outer boundary of the CNMI management subarea in violation of § 665.14(b).

§ 665.406 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for bottomfish with bottom trawls and bottom set gillnets is prohibited.

(b) Possession of gear. Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.404 or otherwise established to be fishing for bottomfish in the management subareas is prohibited.

(c) Poisons and explosives. The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish is prohibited.

§ 665.407 At-sea observer coverage.

All fishing vessels subject to §§ 665.400 through 665.407 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.408–665.419 [Reserved]

§ 665.420 Mariana coral reef ecosystem fisheries. [Reserved]

§ 665.421 Definitions.

As used in §§ 665.420 through 665.439:

Mariana coral reef ecosystem management unit species (Mariana coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

Mariana Currently Harvested Coral Reef Taxa:

Family name	Local name (Chamorro/Carolinian)	English common name	Scientific name
Acanthuridae (Surgeonfishes)		orange-spot surgeonfish	*Acanthurus olivaceus.*
	hugupao dangulo/mowagh	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	kichu/limell	convict tang	*Acanthurus triostegus.*
		eye-striped surgeonfish	*Acanthurus dussumieri.*
		blue-lined surgeon	*Acanthurus nigroris.*
		whitebar surgeonfish	*Acanthurus leucopareius.*
		whitebar surgeonfish	*Acanthurus leucopareius.*
	hiyok/filaang	blue-banded surgeonfish	*Acanthurus lineatus.*
		blackstreak surgeonfish	*Acanthurus nigricauda.*
		whitecheek surgeonfish	*Acanthurus nigricans.*
		white-spotted surgeonfish	*Acanthurus guttatus.*
		ringtail surgeonfish	*Acanthurus blochii.*
		brown surgeonfish	*Acanthurus nigrofuscus.*
		mimic surgeonfish	*Acanthurus pyroferus.*
		Yellow tang	*Zebrasoma flavescens.*
		striped bristletooth	*Ctenochaetus striatus.*
		twospot bristletooth	*Ctenochaetus binotatus.*
	tataga/igh-falafal	bluespine unicornfish	*Naso unicornus.*
	hangon/bwulaalay	orangespine unicornfish	*Naso lituratus.*
		humpnose unicornfish	*Naso tuberosus.*
		black tongue unicornfish	*Naso hexacanthus.*
		bignose unicornfish	*Naso vlamingii.*
		whitemargin unicornfish	*Naso annulatus.*
		spotted unicornfish	*Naso brevirostris.*
		humpback unicornfish	*Naso brachycentron.*
		gray unicornfish	*Naso caesius.*
Balistidae (Triggerfishes)		titan triggerfish	*Balistoides viridescens.*
		clown triggerfish	*Balistoides conspicillum.*
		orange striped triggerfish	*Balistapus undulatus.*
		pinktail triggerfish	*Melichthys vidua.*
		black triggerfish	*Melichthys niger.*
		blue triggerfish	*Pseudobalistes fuscus.*
		Picassofish	*Rhinecanthus aculeatus.*
		wedged Picassofish	*Balistoides rectangulus.*
		bridled triggerfish	*Sufflamen fraenatus.*
Carangidae (Jacks)	atulai/peti	Bigeye scad	*Selar crumenophthalmus.*
		mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)		grey reef shark	*Carcharhinus amblyrhynchos.*
		silvertip shark	*Carcharhinus albimarginatus.*
		Galapagos shark	*Carcharhinus galapagensis.*
		blacktip reef shark	*Carcharhinus melanopterus.*
		whitetip reef shark	*Triaenodon obesus.*
Holocentridae (Solderfish/Squirrelfish).	saksak/mweel	bigscale soldierfish	*Myripristis berndti.*
	sagamelon	bronze soldierfish	*Myripristis adusta.*
	sagamelon	blotcheye soldierfish	*Myripristis murdjan.*
	sagamelon	brick soldierfish	*Myripristis amaena.*
	sagamelon	scarlet soldierfish	*Myripristis pralinia.*
	sagamelon	violet soldierfish	*Myripristis violacea.*
	sagamelon	whitetip soldierfish	*Myripristis vittata.*
	sagamelon	yellowfin soldierfish	*Myripristis chryseres.*
	sagamelon	pearly soldierfish	*Myripristis kuntee.*
	sagamelon	tailspot squirrelfish	*Sargocentron caudimaculatum.*
		file-lined squirrelfish	*Sargocentron microstoma.*
	chalak	crown squirrelfish	*Sargocentron diadema.*

Family name	Local name (Chamorro/Carolinian)	English common name	Scientific name
	sagsag/leet	blue-lined squirrelfish	*Sargocentron tiere.*
	sisiok	saber or long jaw squirrelfish	*Sargocentron spiniferum.*
	sagsag/leet	spotfin squirrelfish	*Neoniphon* spp.
Kuhliidae (Flagtails)		barred flag-tail	*Kuhlia mugil.*
Kyphosidae (Rudderfish)	guili	rudderfish	*Kyphosus biggibus.*
	guili/schpwul	rudderfish	*Kyphosus cinerascens.*
	guilen puengi/reel	rudderfish	*Kyphosus vaigienses.*
Labridae (Wrasses)	tangison/maam	floral wrasse	*Cheilinus chlorourus.*
	tangison/maam	napoleon wrasse	*Cheilinus undulatus.*
	lalacha mamate/ porou	triple-tail wrasse	*Cheilinus trilobatus.*
		harlequin tuskfish, red-breasted wrasse.	*Cheilinus fasciatus.*
		ring-tailed wrasse	*Oxycheilinus unifasciatus.*
		razor wrasse	*Xyrichtys pavo.*
		whitepatch wrasse	*Xyrichtys aneitensis.*
		cigar wrasse	*Cheilio inermis.*
		blackeye thicklip	*Hemigymnus melapterus.*
		barred thicklip	*Hemigymnus fasciatus.*
		three-spot wrasse	*Halichoeres trimaculatus.*
		checkerboard wrasse	*Halichoeres hortulanus.*
		weedy surge wrasse	*Halichoeres margaritacous.*
		three-spot wrasse	*Halichoeres trimaculatus.*
		surge wrasse	*Thalassoma purpureum.*
		red ribbon wrasse	*Thalassoma quinquevittatum.*
		sunset wrasse	*Thalassoma lutescens.*
		longface wrasse	*Hologynmosus doliatus.*
		rockmover wrasse	*Novaculichthys taeniourus.*
Mullidae (Goatfishes)		yellow goatfish	*Mulloidichthys* spp.
	satmoneti/wichigh	yellowfin goatfish	*Mulloidichthys vanicolensis.*
	satmoneti (adult) ti´ao (juvenile)	yellowstripe goatfish	*Mulloidichthys flaviolineatus.*
		banded goatfish	*Parupeneus* spp.
	satmonetiyo/failighi	dash-dot goatfish	*Parupeneus barberinus.*
	satmoneti acho/ sungoongo	doublebar goatfish	*Parupeneus bifasciatus.*
		redspot goatfish	*Parupeneus heptacanthus.*
	satmoneti (adult) ti´ao (juvenile)	white-lined goatfish	*Parupeneus ciliatus.*
	satmoneti (adult) ti´ao (juvenile)	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	satmoneti (adult) ti´ao (juvenile)	side-spot goatfish	*Parupeneus pleurostigma.*
	satmoneti (adult) ti´ao (juvenile)	multi-barred goatfish	*Parupeneus multifaciatus.*
		band tail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	laiguan (adult) agues (juvenile)	striped mullet	*Mugil cephalus.*
	laiguan (adult) agues (juvenile)	Engel's mullet	*Moolgarda engeli.*
	laiguan (adult) agues (juvenile)	fringelip mullet	*Crenimugil crenilabis.*
Muraenidae (Moray eels)		yellowmargin moray eel	*Gymnothorax flavimarginatus.*
		giant moray eel	*Gymnothorax javanicus.*
		undulated moray eel	*Gymnothorax undulatus.*
Octopodidae (Octopus)	gamsun	octopus	*Octopus cyanea.*
	gamsun	octopus	*Octopus ornatus.*
Polynemidae		threadfin	*Polydactylus sexfilis.*
Pricanthidae (Bigeye)		glasseye	*Heteropriacanthus cruentatus.*
		Bigeye	*Priacanthus hamrur.*
Scaridae (Parrotfishes)	atuhong/roow	humphead parrotfish	*Bolbometopon muricatum.*
	palakse (sm.) laggua (lg.)	parrotfish	*Scarus* spp.
	gualafi/oscha	Pacific longnose parrotfish	*Hipposcarus longiceps.*
	palaksin chaguan	stareye parrotfish	*Calotomus carolinus.*
Scombridae	white tuna/ayul	dogtooth tuna	*Gymnosarda unicolor.*
Siganidae (Rabbitfish)	hiting/manahok/llegh	forktail rabbitfish	*Siganus aregentus.*
	hiting	golden rabbitfish	*Siganus guttatus.*
	hiting galagu	gold-spot rabbitfish	*Siganus punctatissimus.*
		Randall's rabbitfish	*Siganus randalli.*
	hiting/sesyon/palawa	scribbled rabbitfish	*Siganus spinus.*
	hiting	vermiculate rabbitfish	*Siganus vermiculatus.*
Sphyraenidae (Barracuda)		Heller's barracuda	*Sphyraena helleri.*
		great barracuda	*Sphyraena barracuda.*
Turbinidae (turban/green snails)	aliling pulan/aliling tulompu	green snails	*Turbo* spp.
		turban shells	

Mariana Potentially Harvested Coral Reef Taxa:

English common name	Scientific name
Wrasses (Those species not listed as Currently Harvested Coral Reef Taxa or CHCRT)	Labridae.
Sharks	Carcharhinidae, Sphyrnidae.
Rays and skates	Dasyatididae, Myliobatidae.
Groupers (Those species not listed as CHCRT or Bottomfish Management Unit Species or BMUS)	Serrandiae.
Jacks and Scads (Those species not listed as CHCRT or BMUS)	Carangidae.
Solderfishes and Squirrelfishes (Those species not listed as CHCRT)	Holocentridae.
Goatfishes (Those species not listed as CHCRT)	Mullidae.
Surgeonfishes (Those species not listed as CHCRT)	Acanthuridae.
Batfishes	Ephippidae.
Monos	Monodactylidae.
Sweetlips	Haemulidae.
Remoras	Echeneidae.
Tilefishes	Malacanthidae.
Emperors (Those species not listed as CHCRT)	Lethrinidae.
Dottybacks	Pseudochromidae.
Prettyfins	Plesiopidae.
Eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Ophichthidae.
Cardinalfishes	Apogonidae.
Moorish Idols	Zanclidae.
Trumpetfish	*Aulostomus chinensis*.
Cornetfish	*Fistularia commersoni*.
Butterfly fishes	Chaetodontidae.
Angelfishes	Pomacanthidae.
Damselfishes	Pomacentridae.
Scorpionfishes	Scorpaenidae.
Coral crouchers	Caracanthidae.
Flashlightfishes	Anomalopidae.
Herrings	Clupeidae.
Anchovies	Engraulidae.
Gobies	Gobiidae.
Blennies	Blenniidae.
Barracudas (Those species not listed as CHCRT)	Sphyraenidae.
Snappers (Those species not listed as CHCRT or BMUS)	Lutjanidae.
Trigger fishes (Those species not listed as CHCRT)	Balistidae.
Rabbitfishes (Those species not listed as CHCRT)	Siganidae.
Sandperches	Pinguipedidae.
Dog tooth tuna	*Gymnosarda unicolor*.
Rudderfishes (Those species not listed as CHCRT)	Kyphosidae.
Flounders, Soles	Bothidae Soleidae.
Trunkfishes	Ostraciidae.
Fusiliers	Caesionidae.
Hawkfishes	Cirrhitidae.
Frogfishes	Antennariidae.
Pipefishes, Seahorses	Syngnathidae.
Puffer fishes, Porcupine fishes	Tetradontidae.
Blue corals	Heliopora.
Organpipe corals	Tubipora.
Ahermatypic corals	Azooxanthellates.
Sea cucumbers, Sea urchins (Those species not listed as CHCRT)	Echinoderms.
	Mollusca.
Sea snails	Gastropoda.
Turban shells	*Trochus* spp.
Sea slugs	Opistobranchs.
Black lipped pearl oyster	*Pinctada margaritifera*.
Giant clam	Tridacnidae.
Other Clams	Other Bivalves.
Mushroom corals	Fungiidae.
Small and large coral polyps.	
Fire corals	Millepora.
Soft corals, Gorgonians.	
Anemones	Actinaria.
Soft zoanthid corals	Zoanthinaria.
	Hydrozoans, Bryzoans.
Sea squirts	Tunicates.
Sponges	Porifera.
	Cephalopods.
Lobsters, Shrimps/Mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS)	Crustacea.
Lace corals	Stylasteridae.
Hydroid corals	Solanderidae.
Seaweed	Algae.

English common name	Scientific name
Segmented worms ..... Live rock.	Annelids.

All other Mariana coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the Mariana CHCRT table or are not Mariana bottomfish, crustacean, precious coral or western Pacific pelagic MUS.

§ 665.422 Management area.

The Mariana coral reef management area consists of the U.S. EEZ around Guam and the offshore area of the CNMI or that portion of the U.S. EEZ around CNMI between three nautical miles offshore and the outer boundary of the U.S. EEZ. The inner boundary of the management area is the seaward boundaries of the Territory of Guam, and a line three nautical miles seaward from the shoreline of CNMI. The outer boundary of the management area is the outer boundary of the U.S. EEZ or adjacent international maritime boundaries. The CNMI and Guam management area is divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.423 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Mariana coral reef ecosystem management area, fishing for Mariana coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.424 Permits and fees.

(a) Applicability. Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) Special permit. Any person of the United States fishing for, taking or retaining Mariana coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Mariana coral reef ecosystem MUS in low-use MPAs as defined in § 665.399;

(ii) Mariana Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) Mariana Coral reef ecosystem MUS in the Mariana coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) Transshipment permit. A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Mariana coral reef ecosystem management area to land or transship Mariana PHCRT, or any Mariana coral reef ecosystem MUS harvested within low-use MPAs.

(3) Exceptions. The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches Mariana coral reef ecosystem MUS while fishing for bottomfish management unit species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for Mariana CHCRT outside of an MPA, who does not retain any incidentally caught Mariana PHCRT.

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) Validity. Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) Application. An applicant for a special or transshipment permit issued under this section must complete, and submit to the Regional Administrator, a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) Issuance.

(i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard, the fishery management agency of the affected State, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected State fishery management agency concerning the permit application, and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to, issues related to spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) 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 after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/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.

(iv) 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 interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may extend, for good cause, any time limit prescribed in this section for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.425 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any Mariana coral reef ecosystem MUS in any low-use MPA as defined in § 665.399 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.424 of this part; or

(3) The Mariana coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Mariana coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.427.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.424.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.426 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Mariana coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.427 Allowable gear and gear restrictions.

(a) Mariana coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and

(11) Remote-operating vehicles/submersibles.

(b) Mariana coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for Mariana coral reef ecosystem MUS in the management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected State fishery management agency.

§ 665.428 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.424 or that is otherwise established to be fishing for Mariana coral reef ecosystem MUS in the management area.

(b) Enforcement action.

(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.429–665.439 [Reserved]

§ 665.440 Mariana crustacean fisheries. [Reserved]

§ 665.441 Definitions.

As used in §§ 665.440 through 665.459:

Crustacean Permit Area 5 (Permit Area 5) means the EEZ around Guam and the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

Mariana crustacean management unit species means the following crustaceans:

Local name	English common name	Scientific name
Mahonggang	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
pa'pangpang	slipper lobster	Scyllaridae.
	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

§ 665.442 Permits.

(a) Applicability.

(1) The owner of any vessel used to fish for lobster in Permit Area 3, must have a permit issued for such a vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 5 must have a permit issued for that vessel.

(b) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) Application. An application for a permit required under this section shall be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.443 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person in Crustacean Permit Area 5 to fish for, take, or retain deepwater shrimp without a permit issued under § 665.442.

§ 665.444 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.445 At-sea observer coverage.

All fishing vessels subject to §§ 665.440 through 665.445 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.446–665.459 [Reserved]

§ 665.460 Mariana precious coral fisheries. [Reserved]

§ 665.461 Definitions.

Mariana precious coral management unit species means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral).	*Corallium secundum, Corallium regale, Corallium laauense.*

English common name	Scientific name
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.
Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

Mariana precious coral permit area means the area encompassing the precious coral beds within the EEZ around the Mariana Archipelago. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [*Reserved*]

(2) Conditional beds. [*Reserved*]

(3) Refugia. [*Reserved*]

(4) Exploratory Area.

(i) Permit Area X–P–G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(ii) Permit Area X–P–CNMI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

§ 665.462 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Mariana precious coral MUS in any Mariana Archipelago precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.461.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.463 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land Mariana precious coral MUS in any Mariana precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of Mariana precious coral MUS in any Mariana precious coral permit area:

(1) By means of gear or methods prohibited by § 665.464.

(2) In refugia specified in § 665.461.

(3) In a bed for which the quota specified in § 665.467 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.466 or 665.469.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.465 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.464 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.465 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Black coral. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.466 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.467 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.467(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) Conditional bed closure. A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) Reserves and reserve release. The quotas for exploratory areas X–P–G and X–P–CNMI will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Guam and CNMI exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) The Guam and CNMI exploratory permit areas, X–P–GU and X–P–CNMI, each have annual quotas of 1,000 kg for all precious coral management unit species combined with the exception of black corals.

§ 665.468 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.469 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart E—Pacific Remote Island Area Fisheries

§ 665.598 Management area.

The PRIA fishery management area is the EEZ seaward of Palmyra Atoll,

Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island, Pacific Remote Island Areas with the inner boundary a line coterminous with the seaward boundaries of the above atolls, reefs and islands PRIA and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.599 Area restrictions.

(a) Fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters are no-take MPAs: Landward of the 50 fathom (fm) (91.5 m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153.

(b) Low-use MPAs. The following U.S. EEZ waters in the Western Pacific Region are low-use MPAs: All waters between the shoreline and the 50 fm (91.5 m) curve around Johnston Atoll, Palmyra Atoll, and Wake Island as depicted on National Ocean Survey Chart Numbers 83637, 83157 and 81664.

§ 665.600 PRIA bottomfish fisheries. [Reserved]

§ 665.601 Definitions.

As used in §§ 665.600 through 665.619:

PRIA bottomfish fishing permit means the permit required by § 665.603 to use a vessel to fish for PRIA bottomfish management unit species in the EEZ around the PRIA, or to land bottomfish MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

PRIA bottomfish management unit species (PRIA bottomfish MUS) means the following fish:

English common name	Scientific name
Silver jaw jobfish	*Aphareus rutilans*
Giant trevally	*Caranx ignobilis*
Black jack	*Caranx lugubris*
Blacktip grouper	*Epinephelus fasciatus*
Sea bass	*Epinephelus quernus*
Red snapper	*Etelis carbunculus*
Longtail snapper	*Etelis coruscans*
Redgill emperor	*Lethrinus rubrioperculatus*
Yellowtail snapper	*Pristipomoides auricilla*
Pink snapper	*Pristipomoides filamentosus*
Pink snapper	*Pristipomoides seiboldii*
Lunartail, lyretail grouper	*Variola louti*

§ 665.602 [Reserved]

§ 665.603 Permits.

(a) Applicability. PRIA. The owner of any vessel used to fish for, land, or transship PRIA bottomfish MUS shoreward of the outer boundary of the PRIA subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(b) Submission. An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

§ 665.604 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.16, it is unlawful for any person to do any of the following:

(a) Fish for PRIA bottomfish MUS using gear prohibited under § 665.605.

(b) Fish for, or retain on board a vessel, PRIA bottomfish MUS in the PRIA without the appropriate permit registered for use with that vessel issued under § 665.13.

(c) Falsify or fail to make or file all reports of PRIA bottomfish MUS landings taken in the PRIA, containing all data in the exact manner, as specified in § 665.14(b).

§ 665.605 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for PRIA bottomfish MUS with bottom trawls and bottom set gillnets is prohibited.

(b) Possession of gear. Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.603 or otherwise established to be fishing for PRIA bottomfish MUS in the PRIA fishery management area is prohibited.

(c) Poisons and explosives. The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting PRIA bottomfish is prohibited.

§ 665.606 At-sea observer coverage.

All fishing vessels subject to §§ 665.600 through 665.606 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.607–665.619 [Reserved]

§ 665.620 PRIA coral reef ecosystem fisheries. [Reserved]

§ 665.621 Definitions.

As used in §§ 665.620 through 665.639:

PRIA coral reef ecosystem management unit species (PRIA coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

PRIA Currently Harvested Coral Reef Taxa:

Family name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	orange-spot surgeonfish	*Acanthurus olivaceus.*
	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	convict tang	*Acanthurus triostegus.*
	eye-striped surgeonfish	*Acanthurus dussumieri.*
	blue-lined surgeon	*Acanthurus nigroris.*
	Whitebar surgeonfish	*Acanthurus leucopareius.*
	blue-banded surgeonfish	*Acanthurus lineatus.*

Family name	English common name	Scientific name
	blackstreak surgeonfish	*Acanthurus nigricauda.*
	whitecheek surgeonfish	*Acanthurus nigricans.*
	white-spotted surgeonfish	*Acanthurus guttatus.*
	Ringtail surgeonfish	*Acanthurus blochii.*
	brown surgeonfish	*Acanthurus nigrofuscus.*
	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	striped bristletooth	*Ctenochaetus striatus.*
	twospot bristletooth	*Ctenochaetus binotatus.*
	yellow tang	*Zebrasoma flavescens.*
	bluespine unicornfish	*Naso unicornus.*
	orangespine unicornfish	*Naso lituratus.*
	black tongue unicornfish	*Naso hexacanthus.*
	bignose unicornfish	*Naso vlamingii.*
	whitemargin unicornfish	*Naso annulatus.*
	spotted unicornfish	*Naso brevirostris.*
Labridae (Wrasses)	Napoleon wrasse	*Cheilinus undulatus.*
	triple-tail wrasse	*Cheilinus trilobatus.*
	floral wrasse	*Cheilinus chlorourus.*
	ring-tailed wrasse	*Oxycheilinus unifasciatus.*
	bandcheek wrasse	*Oxycheilinus diagrammus.*
	barred thicklip	*Hemigymnus fasciatus.*
	three-spot wrasse	*Halichoeres trimaculatus.*
	red ribbon wrasse	*Thalassoma quinquevittatum.*
	sunset wrasse	*Thalassoma lutescens.*
Mullidae (Goatfishes)	yellow goatfish	*Mulloidichthys* spp.
	orange goatfish	*Mulloidichthys pfleugeri.*
	yellowstripe goatfish	*Mulloidichthys flavolineatus.*
	banded goatfish	*Parupeneus* spp.
Mullidae (Goatfishes)	dash-dot goatfish	*Parupeneus barberinus.*
	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	multi-barred goatfish	*Parupeneus multifaciatus.*
	bantail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	fringelip mullet	*Crenimugil crenilabis.*
	engel's mullet	*Moolgarda engeli.*
	false mullet	*Neomyxus leuciscus.*
Muraenidae (Moray eels)	yellowmargin moray eel	*Gymnothorax flavimarginatus.*
	giant moray eel	*Gymnothorax javanicus.*
	undulated moray eel	*Gymnothorax undulatus.*
Octopodidae	Octopus	*Octopus cyanea.*
	Octopus	*Octopus ornatus.*
Pricanthidae (Bigeye)	Glasseye	*Heteropriacanthus cruentatus.*
Scaridae (Parrotfishes)	Humphead parrotfish	*Bolbometopon muricatum.*
	parrotfish	*Scarus* spp.
	pacific longnose parrotfish	*Hipposcarus longiceps.*
	stareye parrotfish	*Calotomus carolinus.*
Scombridae	Dogtooth tuna	*Gymnosarda unicolor.*
Sphyraenidae (Barracuda)	great barracuda	*Sphyraena barracuda.*

PRIA Potentially Harvested Coral Reef Taxa:

English common name	Scientific name
wrasses (Those species not listed as CHCRT)	Labridae.
sharks (Those species not listed as CHCRT)	Carcharhinidae, Sphyrnidae.
rays and skates	Myliobatidae, Mobulidae.
groupers (Those species not listed as CHCRT or as BMUS)	Serrandiae.
jacks and scads (Those species not listed as CHCRT or as BMUS)	Carangidae.
solderfishes and squirrelfishes (Those species not listed as CHCRT)	Holocentridae.
goatfishes (Those species not listed as CHCRT)	Mullidae.
Batfishes	Ephippidae.
Sweetlips	Haemulidae.
Remoras	Echeneidae.
Tilefishes	Malacanthidae.
Dottybacks	Pseudochromidae.
Prettyfins	Plesiopidae.
surgeonfishes (Those species not listed as CHCRT)	Acanthuridae.
emperors (Those species not listed as CHCRT or as BMUS)	Lethrinidae.
Herrings	Clupeidae.
Gobies	Gobiidae.
snappers (Those species not listed as CHCRT or as BMUS)	Lutjanidae.
trigger fishes (Those species not listed as CHCRT)	Balistidae.

English common name	Scientific name
rabbitfishes (Those species not listed as CHCRT)	Siganidae.
eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Ophichthidae.
Cardinalfishes	Apogonidae.
moorish idols	Zanclidae.
butterfly fishes	Chaetodontidae.
Angelfishes	Pomacanthidae.
Damselfishes	Pomacentridae.
Scorpionfishes	Scorpaenidae.
Blennies	Blenniidae.
barracudas (Those species not listed as CHCRT)	Sphyraenidae.
Sandperches	Pinguipedidae.
rudderfishes (Those species not listed as CHCRT)	Kyphosidae.
Fusiliers	Caesionidae.
hawkfishes (Those species not listed as CHCRT)	Cirrhitidae.
Frogfishes	Antennariidae.
pipefishes, seahorses	Syngnathidae.
flounders, soles	Bothidae.
Trunkfishes	Ostraciidae.
puffer fishes, porcupine fishes	Tetradontidae.
Trumpetfish	*Aulostomus chinensis*.
Cornetfish	*Fistularia commersoni*.
blue corals	Heliopora.
organpipe corals	Tubipora.
ahermatypic corals	Azooxanthellates.
mushroom corals	Fungiidae.
small and large coral polyps	
fire corals	Millepora.
soft corals, gorgonians	
Anemones	Actinaria.
soft zoanthid corals	Zoanthinaria.
	Hydrozoans, Bryzoans.
sea squirts	Tunicates.
sea cucumbers and sea urchins	Echinoderms.
Those species not listed as CHCRT	Mollusca.
sea snails	Gastropoda.
	Trochus.
sea slugs	Opistobranchs.
black lipped pearl oyster	*Pinctada margaritifera*.
giant clam	Tridacnidae.
other clams	Other Bivalves.
	Cephalopods.
lobsters, shrimps/mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS).	Crustaceans.
Sponges	Porifera.
lace corals	Stylasteridae.
hydroid corals	Solanderidae.
segmented worms	Annelids.
Seaweed	Algae.
Live rock	
All other PRIA coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the PRIA CHCRT table or are not PRIA bottomfish, crustacean, precious coral, or western Pacific pelagic MUS.	

§ 665.622 [Reserved]

§ 665.623 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the PRIA fishery management area, fishing for PRIA coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.624 Permits and fees.

(a) Applicability. Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) Special permit. Any person of the United States fishing for, taking or retaining PRIA coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) PRIA Coral reef ecosystem MUS in low-use MPAs as defined in § 665.599;

(ii) PRIA Potentially Harvested Coral Reef Taxa in the PRIA coral reef ecosystem management area; or

(iii) PRIA Coral reef ecosystem MUS in the PRIA coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) Transshipment permit. A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the PRIA coral reef ecosystem management area to land or transship PRIA PHCRT, or any PRIA coral reef ecosystem MUS harvested within low-use MPAs.

(3) Exceptions. The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches PRIA coral reef ecosystem MUS while fishing for bottomfish management unit

species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for PRIA CHCRT outside of an MPA, who does not retain any incidentally caught PRIA PHCRT.

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) Validity. Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) Application. An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) Issuance.

(i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard, the fishery management agency of the affected State, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected State fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form

as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) 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 after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/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.

(iv) 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 shall notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may, for good cause, extend any time limit prescribed in this section for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.625 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any PRIA coral reef ecosystem MUS in any low-use MPA as defined in § 665.599 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.624;

(3) The PRIA coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any PRIA coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.627.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.624.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.626 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any PRIA coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.627 Allowable gear and gear restrictions.

(a) Coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and

(11) Remote-operating vehicles/submersibles.

(b) PRIA coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the management area is prohibited.

(c) PRIA coral reef ecosystem MUS may not be taken by means of spearfishing with SCUBA at night (from 6 p.m. to 6 a.m.) in the U.S. EEZ waters around Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll and Palmyra Atoll.

(d) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(e) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected State fishery management agency.

§ 665.628 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.624 or that is otherwise established to be fishing for PRIA coral reef ecosystem MUS in the PRIA fishery management area.

(b) Enforcement action.

(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the PRIA fishery management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.629–665.639 [Reserved]

§ 665.640 PRIA crustacean fisheries. [Reserved]

§ 665.641 Definitions.

As used in §§ 665.640 through 665.659:

Crustacean Permit Area 4 (Permit Area 4) means the EEZ around Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

PRIA crustacean fishing permit means the permit required by § 665.642 to use

a vessel to fish for PRIA crustacean management unit species in the PRIA fishery management area, or to land crustacean MUS shoreward of the outer boundary of the PRIA fishery management area.

PRIA crustacean management unit species means the following crustaceans:

English common name	Scientific name
Spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
Slipper lobster	Scyllaridae.
Kona crab	*Ranina ranina.*
Deepwater shrimp	*Heterocarpus* spp.

§ 665.642 Permits.

(a) Applicability.

(1) The owner of any vessel used to fish for lobster in Permit Area 4 must have a permit issued for that vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 4 must have a permit issued for that vessel.

(b) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) Application. An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.643 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person in Crustacean Permit Area 4 to fish for, take, or retain deepwater shrimp without a permit issued under § 665.642.

§ 665.644 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.645 At-sea observer coverage.

All fishing vessels subject to §§ 665.640 through 665.645 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.646–665.659 [Reserved]

§ 665.660 PRIA precious coral fisheries. [Reserved]

§ 665.661 Definitions.

As used in §§ 665.660 through 665.669:

PRIA precious coral management unit species (PRIA precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.
Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

PRIA precious coral permit area means the area encompassing the precious coral beds within the EEZ around the PRIA. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [Reserved]

(2) Conditional beds. [Reserved]

(3) Refugia. [Reserved]

(4) Exploratory Area. Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll and Wake Island.

§ 665.662 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining PRIA precious coral MUS in any PRIA precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.661.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.663 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land PRIA precious coral MUS in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of PRIA precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.664.

(2) In refugia specified in § 665.661.

(3) In a bed for which the quota specified in § 665.667 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.666 or 665.669.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.665 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.664 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.665 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Black coral. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.666 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.667 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.667(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) Conditional bed closure. A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) Reserves and reserve release. The quotas for exploratory area, X–P–PI, will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the PRIA exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) PRIA exploratory permit area, X–P–PI, has an annual quota of 1,000 kg for all precious coral MUS combined with the exception of black corals.

§ 665.668 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.669 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart F—Western Pacific Pelagic Fisheries

§ 665.798 Management area.

The western Pacific Pelagic fishery management area includes all areas of fishing operations in the EEZ or on the high seas for any vessels of the United States or persons that:

(a) Fish for, possess, or transship western Pacific pelagic fishery management unit species (MUS) within the EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA; or

(b) Land western Pacific pelagic fishery MUS in American Samoa, CNMI, Guam, Hawaii, or PRIA.

§ 665.799 Area restrictions.

(a) Fishing is prohibited in all no-take MPAs designated in this section.

(b) No-take MPAs. The following U.S. EEZ waters are no-take MPAs:

(1) Landward of the 50-fathom (fm) (91.5-m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153;

(2) Landward of the 50-fm (91.5-m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

§ 665.800 Definitions.

As used in §§ 665.798 through 665.818:

American Samoa longline limited access permit means the permit required by § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around American Samoa to fish for western Pacific pelagic MUS using longline gear or to land or transship western Pacific pelagic MUS that were caught in the EEZ around American Samoa using longline gear.

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

Basket-style longline gear means a type of longline gear that is divided into units called ''baskets'' each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

Deep-set or Deep-setting means the deployment of, or deploying, respectively, longline gear in a manner consistent with all the following criteria: with all float lines at least 20 meters in length; with a minimum of 15 branch lines between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); without the use of light sticks; and resulting in the possession or landing of no more than 10 swordfish (*Xiphias gladius*) at any time during a given trip. As used in this definition ''float line'' means a line used to suspend the main longline beneath a float and ''light stick'' means any type of light emitting device, including any fluorescent ''glow bead,'' chemical, or electrically powered light that is affixed underwater to the longline gear.

Fish dealer means any person who:

(1) Obtains, with the intention to resell, western Pacific pelagic MUS, or portions thereof, that were harvested or received by a vessel that holds a permit

or is otherwise regulated under bottomfish fisheries in this subpart; or

(2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such MUS (such as the services provided by a wholesale auction facility).

Hawaii longline limited access permit means the permit required by § 665.801 to use a vessel to fish for western Pacific pelagic MUS with longline gear in the EEZ around Hawaii or to land or transship longline-caught western Pacific pelagic MUS shoreward of the outer boundary of the EEZ around Hawaii.

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in § 665.806.

Longline fishing vessel means a vessel that has longline gear on board the vessel.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nm in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone as defined in § 665.806, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Pelagic handline fishing means fishing for western Pacific pelagic MUS from a stationary or drifting vessel using hook and line gear other than longline gear.

Pelagic troll fishing (trolling) means fishing for western Pacific pelagic MUS from a moving vessel using hook and line gear.

PRIA pelagic troll and handline fishing permit means the permit required by § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around the PRIA to fish for western Pacific pelagic MUS using pelagic handline or troll fishing methods.

Receiving vessel permit means a permit required by § 665.801(c) for a receiving vessel to transship or land western Pacific pelagic MUS taken by other vessels using longline gear.

Shallow-set or shallow-setting means the deployment of, or deploying, respectively, longline gear in a manner that does not meet the definition of deep-set or deep-setting as defined in this section.

Shallow-set certificate means an original paper certificate that is issued by NMFS and valid for one shallow-set of longline gear (more than one nautical mile of deployed longline gear is a complete set) for sets that start during the period of validity indicated on the certificate.

Squid jig fishing means fishing for squid that are western Pacific pelagic MUS using a hook or hooks attached to a line that is raised and lowered in the water column by manual or mechanical means.

Western Pacific general longline permit means the permit authorized under § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around Guam, CNMI, Johnston or Palmyra Atolls, Kingman Reef, or Wake, Jarvis, Baker or Howland Islands to fish for western Pacific pelagic MUS using longline gear or to land or to transship western Pacific pelagic MUS that were caught using longline gear.

Western Pacific pelagic management unit species means the following species:

English common name	Scientific name
Tunas:	
Albacore	*Thunnus alalunga*
bigeye tuna	*Thunnus obesus*
yellowfin tuna	*Thunnus albacares*
northern bluefin tuna	*Thunnus thynnus*
skipjack tuna	*Katsuwonus pelamis*
Kawakawa	*Euthynnus affinis*
other tuna relatives	*Auxis* spp., *Scomber* spp., *Allothunnus* spp.
Billfishes:	
Indo-Pacific blue marlin	*Makaira mazara*
black marlin	*Makaira indica*
striped marlin	*Tetrapturus audax*
shortbill spearfish	*Tetrapturus angustirostris*
Swordfish	*Xiphias gladius*
Sailfish	*Istiophorus platypterus*
Sharks:	
pelagic thresher shark	*Alopias pelagicus*
bigeye thresher shark	*Alopias superciliosus*
common thresher shark	*Alopias vulpinus*
silky shark	*Carcharhinus falciformis*
oceanic whitetip shark	*Carcharhinus longimanus*
blue shark	*Prionace glauca*
shortfin mako shark	*Isurus oxyrinchus*
longfin mako shark	*Isurus paucus*
salmon shark	*Lamna ditropis*
Other pelagic fishes:	
mahimahi (dolphinfish)	*Coryphaena* spp.
Wahoo	*Acanthocybium solandri*
Moonfish	*Lampris* spp.
Oilfish	*Gempylidae*
Pomfret	*Bramidae*
Squid:	
diamondback squid	*Thysanoteuthis rhombus*
neon flying squid	*Ommastrephes bartramii*
purpleback flying squid	*Sthenoteuthis oualaniensis*

§ 665.801 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 western Pacific pelagic MUS 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, western Pacific pelagic MUS 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 § 665.816, if that vessel is used to:

(1) Fish for western Pacific pelagic MUS using longline gear in the EEZ around American Samoa;

(2) Land shoreward of the outer boundary of the EEZ around American Samoa western Pacific pelagic MUS that were harvested using longline gear in the EEZ around American Samoa; or

(3) Transship shoreward of the outer boundary of the EEZ around American Samoa western Pacific pelagic MUS 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 general longline permit, American Samoa longline limited access permit, or Hawaii longline limited access permit if that vessel is used to:

(1) Fish for western Pacific pelagic MUS using longline gear in the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll); or

(2) Land or transship shoreward of the outer boundary of the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll), western Pacific pelagic MUS 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, shoreward of the outer boundary of the EEZ around American Samoa, Hawaii, Guam, CNMI, or PRIA, western Pacific pelagic MUS 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 western Pacific pelagic MUS using pelagic handline or trolling fishing methods in the EEZ around the PRIA (with the exception of Midway Atoll).

(g) A vessel of the United States must be registered for use under a Western Pacific squid jig fishing permit, if that vessel is more than 50 ft (15.4 m) LOA and is used to squid jig fish in EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA.

(h) Any required permit must be valid and 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.

(i) 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.

(j) An application for a permit required under this section will be submitted to PIRO as described in § 665.13.

(k) 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 § 665.13.

(l) 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) [Reserved]

(m) 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).

(n) 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.

(o) 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 must be in writing, must state the action(s) appealed, and the reasons therefore, and must 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 for qualifying for, or renewing, limited access permits. In making such decision, the Administrator will review relevant portions of the Western Pacific Pelagic FEP, 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 (o)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefore, 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 and/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) therefore, 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 (o)(4) of this section, the Regional Administrator, for good cause, may extend any time limit prescribed in this section for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefore.

§ 665.802 Prohibitions.

In addition to the prohibitions specified in § 600.725 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 western Pacific pelagic MUS landings, containing all data and in the exact manner, as required by applicable State law or regulation, as specified in § 665.14(a), 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 western Pacific pelagic MUS using longline gear, on the high seas, in violation of §§ 665.801(a), and 300.15 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 western Pacific pelagic MUS using longline gear, in violation of § 665.801(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 transship western Pacific pelagic MUS that were harvested with longline gear, in violation of § 665.801(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 western Pacific pelagic MUS using longline gear, in violation of § 665.801(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 western Pacific pelagic MUS that were caught with longline gear within the EEZ around American Samoa, in violation of § 665.801(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 transship western Pacific pelagic MUS that were caught with longline gear, in violation of § 665.801(c)(3).

(h) Use a vessel in the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for western Pacific pelagic MUS using longline gear, in violation of § 665.801(d)(1).

(i) Use a vessel shoreward of the outer boundary of the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to land or transship western Pacific pelagic MUS that were harvested using longline gear, in violation of § 665.801(d)(2).

(j) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa, CNMI, Guam, Hawaii, or PRIA, to land or transship western Pacific pelagic MUS caught by other vessels using longline gear, without a valid receiving vessel permit registered for use with that vessel, in violation of § 665.801(e).

(k) Use a vessel in the EEZ around the PRIA employing handline or trolling methods to fish for western Pacific pelagic MUS without a valid PRIA pelagic troll and handline fishing permit registered for use for that vessel, in violation of § 665.801(f).

(l) Fish in the fishery after failing to comply with the notification requirements in § 665.803.

(m) Fail to comply with notification requirements set forth in § 665.803 or in any EFP issued under § 665.17.

(n)–(u) [Reserved]

(v) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under §§ 665.17 or 665.807, in violation of § 665.806.

(w) Fish for western Pacific pelagic MUS with longline gear within the protected species zone, in violation of § 665.806(b).

(x) Fail to comply with a term or condition governing the observer program established in § 665.808, 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 western Pacific pelagic MUS 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) Fail to fish in accordance with the seabird take mitigation techniques set forth at §§ 665.815(a)(1) or 665.815(a)(2) when operating a vessel registered for use under a Hawaii longline limited access permit.

(aa) [Reserved]

(bb) Engage in shallow-setting without a valid shallow-set certificate for each shallow set made, in violation of § 665.813(c).

(cc) Own or operate a vessel registered for use under any longline permit issued under § 665.801 while engaged in longline fishing for western Pacific pelagic MUS and fail to be certified for completion of a NMFS protected species workshop, in violation of § 665.814(a).

(dd) Own or operate a vessel registered for use under any longline permit issued under § 665.801 while engaged in longline fishing for western Pacific pelagic MUS without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof, in violation of § 665.814(d).

(ee) 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 § 665.803(a) indicated that deep-setting would be done, in violation of § 665.813(d).

(ff) Fail to carry, or fail to use, a line clipper, dip net, or dehooker on a vessel registered for use under any longline permit issued under § 665.801, in violation of § 665.812.

(gg)–(hh) [Reserved]

(ii) When operating a vessel registered for use under any longline limited access permit issued under § 665.801, fail to comply with the sea turtle handling, resuscitation, and release requirements, in violation of § 665.812(b).

(jj) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.801 north of the Equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with a 10° offset, in violation of § 665.813(f).

(kk) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.801 north of the Equator (0° lat.) with bait other than mackerel-type bait, in violation of § 665.813(g).

(ll) [Reserved]

(mm) 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 § 665.815(a)(1) or (a)(2).

(nn) 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 § 665.815(a)(2)(v).

(oo) 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 § 665.815(a)(2)(vi) through (viii).

(pp) 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 § 665.815(a)(2)(i) through (iv).

(qq) Fail to be begin the deployment of longline gear at least 1 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 § 665.815(a)(4).

(rr) 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 § 665.815(b).

(ss) 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 § 665.813(b), in violation of § 665.813(i).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of actual notice that the shallow-set component of the longline fishery has been closed pursuant to § 665.813(b), in violation of § 665.813(i).

(uu)–(vv) [Reserved]

(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 § 665.815(c).

(xx) Use a large vessel to fish for western Pacific Pelagic MUS within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 665.818.

(yy) Fish for western Pacific pelagic MUS using gear prohibited under § 665.810 or not permitted by an EFP issued under § 665.17.

(zz) Use a vessel that is greater than 50 ft (15.4 m) LOA to squid jig fish in EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA, without a Western Pacific squid jig fishing permit registered for use with that vessel, in violation of § 665.801(g).

§ 665.803 Notifications.

(a) The permit holder, or designated agent, for any vessel registered for use under a Hawaii longline limited access permit, or for any vessel greater than 40 ft (12.2 m) LOA 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 permit holder or designated agent for a vessel 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 permit holder, or designated agent, for any vessel registered for use under a Western Pacific squid jig fishing permit that is greater than 50 ft (15.4 m) LOA, 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 western Pacific EEZ waters. 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.

(c) For purposes of this section, 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 permit holder or designated agent to be available between 8 a.m. and 5 p.m. (local time) on weekdays for NMFS to contact to arrange observer placement.

(d) 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 § 665.806, 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.

(e) The permit holder for any American Samoa longline limited access permit, or an agent designated by the permit holder, must notify the Regional Administrator in writing within 30 days of any change to the permit holder's contact information or any change to the vessel documentation associated with a permit registered to an American Samoa longline limited access permit. Complete changes in the ownership of the vessel registered to an American Samoa longline limited access permit must also be reported to PIRO in writing within 30 days of the change. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) or 15 CFR part 904, subpart D.

§ 665.804 Gear identification.

(a) Identification. The operator of each permitted vessel in the fishery management area must ensure that the official number of the vessel be affixed to every longline buoy and float, including each buoy and float that is attached to a radar reflector, radio antenna, or flag marker, whether attached to a deployed longline or possessed on board the vessel. Markings must be legible and permanent, and must be of a color that contrasts with the background material.

(b) Enforcement action. Longline gear not marked in compliance with paragraph (a) of this section and found deployed in the EEZ will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§ 665.805 [Reserved]

§ 665.806 Longline fishing prohibited area management.

(a) Prohibited areas. Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in paragraphs (b), (c), and (d) of this section.

(b) Longline protected species zone. (1) The protected species zone is 50 nm from the center geographical positions of certain islands and reefs in the NWHI, as follows:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

(2) Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

(c) Main Hawaiian Islands (MHI).

(1) From February 1–September 30 each year, the longline fishing prohibited area around the MHI is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
B	18°20′	156°25′
C	20°00′	157°30′
D	20°40′	161°40′
E	21°40′	161°55′
F	23°00′	161°30′
G	23°05′	159°30′
H	22°55′	157°30′
I	21°30′	155°30′
J	19°50′	153°50′
K	19°00′	154°05′
A	18°05′	155°40′

(2) From October 1 through the following January 31 each year, the longline fishing prohibited area around the MHI is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
L	18°25′	155°40′
M	19°00′	154°45′
N	19°15′	154°25′
O	19°40′	154°20′
P	20°20′	154°55′
Q	20°35′	155°30′
R	21°00′	155°35′
S	22°30′	157°35′
T	22°40′	159°35′
U	22°25′	160°20′
V	21°55′	160°55′
W	21°40′	161°00′
E	21°40′	161°55′
D	20°40′	161°40′
C	20°00′	157°30′
B	18°20′	156°25′
A	18°05′	155°40′

(d) Guam. The longline fishing prohibited area around Guam is the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°25′	144°00′
B	14°00′	143°38′
C	13°41′	143°33′33″
D	13°00′	143°25′30″
E	12°20′	143°37′
F	11°40′	144°09′
G	12°00′	145°00′
H	13°00′	145°42′
I	13°27′	145°51′

§ 665.807 Exemptions for longline fishing prohibited areas; procedures.

(a) An exemption permitting a person to use longline gear to fish in a portion(s) of the Hawaii longline fishing prohibited area will be issued to a person who can document that he or she:

(1) Currently owns a Hawaii longline limited access permit issued under this part and registered for use with his or her vessel;

(2) Before 1970, was the owner or operator of a vessel when that vessel landed western Pacific pelagic MUS taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area;

(3) Was the owner or operator of a vessel that landed western Pacific pelagic MUS taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area, in at least 5 calendar years after 1969, which need not be consecutive; and

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught western Pacific pelagic MUS in an area that is now in the Hawaii longline fishing prohibited area.

(b) Each exemption shall specify the portion(s) of the Hawaii longline fishing prohibited area, bounded by longitudinal and latitudinal lines drawn to include each statistical area, as appearing on Hawaii State Commercial Fisheries Charts, in which the exemption holder made the harvest documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the Hawaii longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption under this section must submit an application and supporting documentation to PIRO at least 15 days before the desired effective date of the exemption.

(e) If the Regional Administrator determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional Administrator may prohibit all longline fishing in the Hawaii longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

(f) The Council will consider information provided by persons with Hawaii longline limited access permits issued under this part who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a) of this section to permit additional exemptions.

(1) If additional exemptions are needed, the Council will advise the Regional Administrator in writing of its recommendation, including criteria by which financial hardships will be mitigated, while retaining the

effectiveness of the longline fishing prohibited area.

(2) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Administrator to the Council for the rejection; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the Pelagics FEP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

§ 665.808 Conditions for at-sea observer coverage.

(a) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip for which NMFS received timely notice in compliance with these regulations.

(b) The ''Notice Prior to Fishing Trip'' requirements in this subpart commit the permit holder to the representations in the notice. The notice can be modified by the permit holder or designated agent because of changed circumstance, if the Regional Administrator is promptly provided a modification to the notice that complies with the notice requirements. The notice will also be considered modified if the Regional Administrator and the permit holder or designated agent agrees to placement changes.

(c) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart, or as a condition of an EFP issued under § 665.17, the vessel may not engage in the fishery without taking the observer.

(d) A NMFS observer shall arrive at the observer's assigned vessel 30 minutes before the time designated for departure in the notice or the notice as modified, and will wait 1 hour for departure.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Administrator's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or seabird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator.

(i) Reimbursement requirements are as follows:

(1) Upon observer verification of vessel accommodations and the number of assigned days on board, NMFS will reimburse vessel owners a reasonable amount for observer subsistence as determined by the Regional Administrator.

(2) If requested and properly documented, NMFS will reimburse the vessel owner for the following:

(i) Communications charges incurred by the observer.

(ii) Lost fishing time arising from a seriously injured or seriously ill observer, provided that notification of the nature of the emergency is transmitted to the Observer Program, NMFS (see address for PIRO Regional Administrator) at the earliest practical time. NMFS will reimburse the owner only for those days during which the vessel is unable to fish as a direct result of helping the NMFS employee who is seriously injured or seriously ill. Lost fishing time is based on time travelling to and from the fishing grounds and any documented out-of-pocket expenses for medical services. Payment will be based on the current target fish market prices and that vessel's average target fish catch retained per day at sea for the previous 2 years, but shall not exceed $5,000 per day or $20,000 per claim. Detailed billing with receipts and supporting records are required for allowable communication and lost fishing time claims. The claim must be completed in ink, showing the claimant's printed name, address, vessel name, observer name, trip dates, days observer was on board, an explanation of the charges, and claimant's dated signature with a statement verifying the claim to be true and correct. Requested reimbursement claims must be submitted to the Fisheries Observer Branch, Pacific Islands Region, NMFS. NMFS will not process reimbursement invoices and documentation submitted more than 120 days after the occurrence.

(j) If a vessel normally has cabins for crew members, female observers on a vessel with an all-male crew must be accommodated either in a single person cabin or, if NMFS concludes that adequate privacy can be ensured by installing a curtain or other temporary divider, in a two-person shared cabin. If the vessel normally does not have cabins for crew members, alternative accommodations must be approved by NMFS. If a cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, or if no cabin is assigned, then arrangements for sharing common facilities must be established and approved in advance by NMFS.

§ 665.809 Port privileges and transiting for unpermitted U.S. longline vessels.

A U.S. longline fishing vessel that does not have a permit under subpart A of this part may enter waters of the fishery management area with western Pacific pelagic MUS on board, but may not land or transship any western Pacific pelagic MUS on board the vessel. The vessel's longline gear must be stowed or secured so it is rendered unusable during the time the vessel is in those waters.

§ 665.810 Prohibition of drift gillnetting.

Fishing with drift gillnets in the fishery management area is prohibited, except where authorized by an EFP issued under § 665.17.

§ 665.811 [Reserved]

§ 665.812 Sea turtle take mitigation measures.

(a) Possession and use of required mitigation gear. The gear required in paragraph (a) of this section must be

used according to the sea turtle handling requirements set forth in paragraph (b) of this section.

(1) Hawaii longline limited access permits. Any owner or operator of a vessel registered for use under a Hawaii longline limited access permit must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting the minimum design and performance standards specified in paragraph (a)(7) of this section.

(2) Other longline vessels with freeboards of more than 3 ft (0.91m). Any owner or operator of a longline vessel with a permit issued under § 665.801 other than a Hawaii limited access longline permit and that has a freeboard of more than 3 ft (0.91 m) must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting this minimum design and performance standards specified in paragraph (a)(7) of this section.

(3) Other longline vessels with freeboards of 3 ft (0.91 m) or less. Any owner or operator of a longline vessel with a permit issued under § 665.801 other than a Hawaii limited access longline permit and that has a freeboard of 3 ft (0.91 m) or less must carry aboard their vessels line clippers capable of cutting the vessels fishing line or leader within approximately 1 ft (0.3 m) of the eye of an embedded hook, as well as wire or bolt cutters capable of cutting through the vessel's hooks.

(4) Handline, troll, pole-and-line, and other vessels using hooks other than longline vessels. Any owner or operator of a vessel fishing under the Pelagics FEP with hooks other than longline gear are not required to carry specific mitigation gear, but must comply with the handling requirements set forth in paragraph (b) of this section.

(5) Line clippers. Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see Figure 3 to this part). The minimum design standards are as follows:

(i) A protected cutting blade. The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) Cutting blade edge. The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) An extended reach holder for the cutting blade. The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) Secure fastener. The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(6) Dip nets. Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section nets are:

(i) An extended reach handle. The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(ii) Size of dip net. The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches by 3 inches (7.62 cm by 7.62 cm).

(7) Dehookers.

(i) Long-handled dehooker for ingested hooks. This item is intended to be used to remove ingested hooks from sea turtles that cannot be boated, and to engage a loose hook when a turtle is entangled but not hooked and line is being removed. One long-handled dehooker for ingested hooks is required on board. The minimum design and performance standards are as follows:

(A) Hook removal device. The hook removal device must be constructed of 5/16 inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1 7/8 inches (4.76 cm) outside diameter. The device must be capable of securely engaging and controlling the leader while shielding the barb of the hook to prevent the hook from re-engaging during removal. It must not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size capable of securing the range of hook sizes and styles used by the vessel.

(B) Extended reach handle. The hook removal device must be securely fastened to an extended reach handle or pole with a length equal to or greater than 150 percent of the vessel's freeboard or 6 ft (1.83 m), whichever is greater. It is recommended that the handle be designed so that it breaks down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(ii) Long-handled dehooker for external hooks. This item is intended to be used to remove externally-hooked hooks from sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (a)(7)(i) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) Construction. The device must be constructed of 5/16 inch (7.94 mm) 316 L stainless steel rod. A 5 inch (12.70 cm) tube T-handle of 1 inch (2.54 cm) outside diameter is recommended, but not required. The dehooking end must be blunt with all edges rounded. The device must be of a size capable of securing the range of hook sizes and styles used by the vessel.

(B) Handle. The handle must have a length equal to or greater than the vessel's freeboard or 3 ft (0.91 m), whichever is greater.

(iii) Long-handled device to pull an ''inverted V.'' This item is intended to be used to pull an ''inverted V'' in the fishing line when disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'' is required on board. The long-handled dehooker for external hooks described in paragraph (a)(7)(ii) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) Hook end. It must have a hook-shaped end, like that of a standard boat hook or gaff, which must be constructed of stainless steel or aluminum.

(B) Handle. The handle must have a length equal to or greater than 150 percent of the vessel's freeboard or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to allow the hook end to be effectively used to engage and pull an ''inverted V'' in the line.

(iv) Tire. This item is intended to be used for supporting a turtle in an upright orientation while it is on board. One tire is required on board, but an assortment of sizes is recommended to accommodate a range of turtle sizes. The tire must be a standard passenger vehicle tire and must be free of exposed steel belts.

(v) Short-handled dehooker for ingested hooks. This item is intended to be used to remove ingested hooks,

externally hooked hooks, and hooks in the front of the mouth of sea turtles that can be boated. One short-handled dehooker for ingested hooks is required on board. The minimum design and performance standards are as follows:

(A) Hook removal device. The hook removal device must be constructed of ¼ inch (6.35 mm) 316 L stainless steel, and the design of the dehooking end must be such to allow the hook to be secured and the barb shielded without re-engaging during the hook removal process. The dehooking end must be no larger than 1 5/16 inch (3.33 cm) outside diameter. It must not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. The dehooking end must be of a size appropriate to secure the range of hook sizes and styles used by the vessel.

(B) Sliding plastic bite block. The dehooker must have a sliding plastic bite block, which is intended to be used to protect the sea turtle's beak and facilitate hook removal if the turtle bites down on the dehooker. The bite block must be constructed of a ¾ inch (1.91 cm) inside diameter high impact plastic cylinder (for example, Schedule 80 PVC) that is 10 inches (25.40 cm) long. The dehooker and bite block must be configured to allow for 5 inches (12.70 cm) of slide of the bite block along the shaft of the dehooker.

(C) Shaft and handle. The shaft must be 16 to 24 inches (40.64 to 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 to 15.24 cm) in length and ¾ to 1¼ inches (1.90 to 3.18 cm) in diameter.

(vi) Short-handled dehooker for external hooks. This item is intended to be used to remove externally hooked hooks from sea turtles that can be boated. One short-handled dehooker for external hooks is required on board. The short-handled dehooker for ingested hooks required to comply with paragraph (a)(7)(v) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) Hook removal device. The hook removal device must be constructed of 5/16 inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used by the vessel.

(B) Shaft and handle. The shaft must be 16 to 24 inches (40.64 to 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 to 15.24 cm) in length and ¾ to 1¼ inches (1.90 to 3.18 cm) in diameter.

(vii) Long-nose or needle-nose pliers. This item is intended to be used to remove deeply embedded hooks from the turtle's flesh that must be twisted in order to be removed, and also to hold in place PVC splice couplings when used as mouth openers. One pair of long-nose or needle-nose pliers is required on board. The minimum design standards are as follows: The pliers must be 8 to 14 inches (20.32 to 35.56 cm) in length. It is recommended that they be constructed of stainless steel material.

(viii) Wire or bolt cutters. This item is intended to be used to cut through hooks in order to remove all or part of the hook. One pair of wire or bolt cutters is required on board. The minimum design and performance standards are as follows: The wire or bolt cutters must be capable of cutting hard metals, such as stainless or carbon steel hooks, and they must be capable of cutting through the hooks used by the vessel.

(ix) Monofilament line cutters. This item is intended to be used to cut and remove fishing line as close to the eye of the hook as possible if the hook is swallowed or cannot be removed. One pair of monofilament line cutters is required on board. The minimum design standards are as follows: Monofilament line cutters must be 6 to 9 inches (15.24 to 22.86 cm) in length. The blades must be 1¾ (4.45 cm) in length and ⅝ inches (1.59 cm) wide when closed.

(x) Mouth openers and gags. These items are intended to be used to open the mouths of boated sea turtles, and to keep them open when removing ingested hooks in a way that allows the hook or line to be removed without causing further injury to the turtle. At least two of the seven different types of mouth openers and gags described below are required on board. The seven types and their minimum design standards are as follows.

(A) A block of hard wood. A block of hard wood is intended to be used to gag open a turtle's mouth by placing it in the corner of the jaw. It must be made of hard wood of a type that does not splinter (for example, maple), and it must have rounded and smoothed edges. The dimensions must be 10 to 12 inches (24.50 to 30.48 cm) by ¾ to 1¼ inches (1.90 to 3.18 cm) by ¾ to 1¼ inches (1.90 to 3.18 cm).

(B) A set of three canine mouth gags. A canine mouth gag is intended to be used to gag open a turtle's mouth while allowing hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches, 12.7 cm), medium (6 inches, 15.2 cm), and large (7 inches, 17.8 cm). They must be constructed of stainless steel. A 1¾ inch (4.45 cm) long piece of vinyl tubing (¾ inch, 1.91 cm) outside diameter and ⅝ inch (1.59 cm) inside diameter) must be placed over the ends of the gags to protect the turtle's beak.

(C) A set of two sturdy canine chew bones. A canine chew bone is intended to be used to gag open a turtle's mouth by placing it in the corner of the jaw. They must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½ to 8 inches (13.97 to 20.32 cm) in length) and one small (3½ to 4½ inches (8.89 to 11.43 cm) in length) canine chew bones.

(D) A set of two rope loops covered with hose. A set of two rope loops covered with a piece of hose is intended to be used as a mouth opener and to keep a turtle's mouth open during hook and/or line removal. A set consists of two 3-foot (0.91 m) lengths of poly braid rope, each covered with an 8 inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) light-duty garden hose, and each tied into a loop.

(E) A hank of rope. A hank of rope is intended to be used to gag open a sea turtle's mouth by placing it in the corner of the jaw. A hank of rope is made from a 6 foot (1.83 m) lanyard of braided nylon rope that is folded to create a hank, or looped bundle, of rope. The hank must be 2 to 4 inches (5.08 to 10.16 cm) in thickness.

(F) A set of four PVC splice couplings. PVC splice couplings are intended to be used to allow access to the back of the mouth of a turtle for hook and line removal by positioning them inside a turtle's mouth and holding them in place with long-nose or needle-nose pliers. The set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inches (3.18 cm), 1½ inches (3.81 cm), and 2 inches (5.08 cm).

(G) A large avian oral speculum. A large avian oral speculum is intended to be used to hold a turtle's mouth open and control the head with one hand while removing a hook with the other hand. It must be 9 inches (22.86 cm) in length and constructed of 3/16 inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing 5/16 inch (7.94 mm) outside diameter, 3/16 inch (4.76 mm) inside diameter.

(b) Handling requirements. If a sea turtle is observed to be hooked or entangled in fishing gear from any vessel fishing under the Pelagics FEP, vessel owners and operators must use the required mitigation gear set forth in paragraph (a) of this section to comply with these handling requirements. Any hooked or entangled sea turtle must be handled in a manner to minimize injury and promote survival.

(1) Sea turtles that cannot be brought aboard. In instances where a sea turtle is too large to be brought aboard or the sea turtle cannot be brought aboard without causing further injury to the sea turtle, the vessel owner or operator must disentangle and remove the gear, or cut the line as close as possible to the hook or entanglement, to remove the maximum amount of the gear from the sea turtle.

(2) Sea turtles that can be brought aboard. In instances where a sea turtle is not too large to be brought aboard, or the sea turtle can be brought aboard without causing further injury to the turtle, the vessel owner or operator must take the following actions:

(i) Immediately bring the sea turtle aboard;

(ii) Handle the sea turtle in accordance with the procedures in paragraphs (b)(3) and (b)(4) of this section; and

(iii) Disentangle and remove the gear, or cut the line as close as possible to the hook or entanglement, to remove the maximum amount of the gear from the sea turtle.

(3) Sea turtle resuscitation. If a sea turtle appears dead or comatose, the following actions must be taken:

(i) Place the sea turtle on its belly (on the bottom shell or plastron) so that the sea turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles;

(ii) Administer a reflex test at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of a sea turtle to determine if the sea turtle is responsive;

(iii) Keep the sea turtle shaded and damp or moist (but under no circumstances place the sea turtle into a container holding water). A water-soaked towel placed over the eyes, carapace and flippers is the most effective method of keeping a sea turtle moist; and

(iv) Return to the sea any sea turtle that revives and becomes active in the manner described in paragraph (b)(4) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (b)(4) of this section.

(4) Sea turtle release. After handling a sea turtle in accordance with the requirements of paragraphs (b)(2) and (b)(3) of this section, the sea turtle must be returned to the ocean after identification unless NMFS requests the retention of a dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:

(i) Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and release the sea turtle away from deployed gear; and

(ii) Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(5) Other sea turtle requirements. No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transshipped or kept below deck only if NMFS requests the retention of a dead sea turtle for research.

§ 665.813 Western Pacific longline fishing restrictions.

(a) Annual effort limit on shallow-setting by Hawaii longline vessels.

(1) A maximum annual limit of 2,120 is established on the number of shallow-set certificates that will be made available each calendar year to vessels registered for use under Hawaii longline limited access permits.

(2) The Regional Administrator will divide the 2,120-set annual effort limit each calendar year into equal shares such that each holder of a Hawaii longline limited access permit who provides notice of interest to the Regional Administrator no later than November 1 prior to the start of the calendar year, pursuant to paragraph (a)(3) of this section, receives one share for each permit held. If such division would result in shares containing a fraction of a set, the annual effort limit will be adjusted downward such that each share consists of a whole number of sets.

(3) Any permit holder who provides notice according to this paragraph (a) is eligible to receive shallow-set certificates. In order to be eligible to receive shallow-set certificates for a given calendar year, holders of Hawaii longline limited access permits must provide written notice to the Regional Administrator of their interest in receiving such certificates no later than November 1 prior to the start of the calendar year, except for 2004, the notification deadline for which is May 1, 2004.

(4) No later than December 1 of each year, the Regional Administrator will send shallow-set certificates valid for the upcoming calendar year to all holders of Hawaii longline limited access permits, as of the just previous November 1, that provided notice of interest to the Regional Administrator pursuant to paragraph (a)(3) of this section.

(b) Limits on sea turtle interactions.

(1) Maximum annual limits are established on the numbers of physical interactions that occur each calendar year between leatherback and loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting. The limits are based on the annual numbers of the two turtle species expected to be captured in the shallow-set component of the Hawaii-based fishery, as indicated in the incidental take statement of the biological opinion issued by NMFS pursuant to section 7 of the Endangered Species Act. If the numbers in the incidental take statement are modified or if a new biological opinion is issued, new rulemaking will be undertaken to change the interaction limits accordingly. The limits are as follows:

(i) The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is sixteen (16).

(ii) The annual limit for loggerhead sea turtles (*Caretta caretta*) is seventeen (17).

(2) Upon determination by the Regional Administrator that, based on data from NMFS observers, either of the two sea turtle interaction limits has been reached during a given calendar year:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification of the sea turtle interaction limit having been reached. The notification will include an advisement that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, until the end of the calendar year in which the sea turtle interaction limit was reached. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date,

to all holders of Hawaii longline limited access permits via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(2)(i) of this section, until the end of the calendar year in which the sea turtle interaction limit was reached, the Hawaii-based shallow-set component of the longline fishery shall be closed.

(c) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may engage in shallow-setting north of the Equator (0° lat.) providing that there is on board one valid shallow-set certificate for every shallow-set that is made north of the Equator (0° lat.) during the trip. For each shallow-set made north of the Equator (0° lat.) vessel operators must submit one valid shallow-set certificate to the Regional Administrator. The certificate must be attached to the original logbook form that corresponds to the shallow-set and that is submitted to the Regional Administrator within 72 hours of each landing of MUS as required under § 665.14.

(d) Vessels registered for use under a Hawaii longline limited access permit may not have on board at any time during a trip for which notification to NMFS under § 665.803(a) indicated that deep-setting would be done any float lines less than 20 meters in length or light sticks. As used in this paragraph ''float line'' means a line used to suspend the main longline beneath a float and ''light stick'' means any type of light emitting device, including any fluorescent ''glow bead,'' chemical, or electrically powered light that is affixed underwater to the longline gear.

(e) Shallow-set certificates may be transferred only to holders of Hawaii longline limited access permits.

(f) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.801 must use only offset circle hooks sized 18/0 or larger, with a 10° offset, when shallow-setting north of the Equator (0° lat.). As used in this paragraph, an offset circle hook sized 18/0 or larger is one with an outer diameter at its widest point no smaller than 1.97 inches (50 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). As used in this paragraph, a 10° offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed end, or shank, of the hook when laid on its side.

(g) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.801 must use only mackerel-type bait when shallow-setting north of the Equator (0° lat.). As used in this paragraph, mackerel-type bait means a whole fusiform fish with a predominantly blue, green or gray back and predominantly gray, silver or white lower sides and belly.

(h) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may make sets only of the type (shallow-setting or deep-setting) indicated in the notification to NMFS pursuant to § 665.803(a).

(i) Vessels registered for use under Hawaii longline limited access permits may not be used to engage in shallow-setting north of the Equator (0° lat.) any time during which the shallow-set component of the longline fishery is closed pursuant to paragraph (b)(2)(ii) of this section.

(j) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may land or possess no more than 10 swordfish from a fishing trip for which the permit holder notified NMFS under § 665.803(a) that the vessel would engage in a deep-setting trip.

§ 665.814 Protected species workshop.

(a) Each year, both the owner and the operator of a vessel registered for use under any longline permit issued under § 665.801 must attend and be certified for completion of a workshop conducted by NMFS on interaction mitigation techniques for sea turtles, seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under any longline permit issued under § 665.801 must have a valid protected species workshop certificate issued by NMFS to the owner of the vessel, in order to maintain or renew their vessel registration.

(d) An owner and an operator of a vessel registered for use under any longline permit issued under § 665.801 must have on board the vessel a valid protected species workshop certificate issued by NMFS to the operator of the vessel, or a legible copy thereof.

§ 665.815 Pelagic longline seabird mitigation measures.

(a) Seabird mitigation techniques. When deep-setting or shallow-setting north of 23° N. lat. or shallow-setting south of 23° N. lat., owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraph (a)(2) of this section.

(1) Side-setting. Owners and operators of vessels opting to side-set under this section must fish according to the following specifications:

(i) The mainline must be deployed as far forward on the vessel as practicable, and at least 1 m (3.3 ft) forward from the stern of the vessel;

(ii) The mainline and branch lines must be set from the port or the starboard side of the vessel;

(iii) If a mainline shooter is used, the mainline shooter must be mounted as far forward on the vessel as practicable, and at least 1 m (3.3 ft) forward from the stern of the vessel;

(iv) Branch lines must have weights with a minimum weight of 45 g (1.6 oz);

(v) One weight must be connected to each branch line within 1 m (3.3 ft) of each hook;

(vi) When seabirds are present, the longline gear must be deployed so that baited hooks remain submerged and do not rise to the sea surface; and

(vii) A bird curtain must be deployed. Each bird curtain must consist of the following three components: a pole that is fixed to the side of the vessel aft of the line shooter and which is at least 3 m (9.8 ft) long; at least three main streamers that are attached at regular intervals to the upper 2 m (6.6 ft) of the pole and each of which has a minimum diameter of 20 mm (0.8 in); and branch streamers attached to each main streamer at the end opposite from the pole, each of which is long enough to drag on the sea surface in the absence of wind, and each of which has a minimum diameter of 10 mm (0.4 in).

(2) Alternative to side-setting. Owners and operators of vessels that do not side-set must do the following:

(i) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled, when seabirds are present;

(ii) Retain sufficient quantities of fish, fish parts, or spent bait between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(2)(i) of this section;

(iii) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (a)(2)(i) of this section;

(iv) Remove the bill and liver of any swordfish that is caught, sever its head

from the trunk and cut it in half vertically and periodically discharge the butchered heads and livers in accordance with paragraph (a)(2)(i) of this section;

(v) When using basket-style longline gear north of 23° N. lat., ensure that the main longline is deployed slack to maximize its sink rate;

(vi) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(vii) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel; and

(viii) Follow the requirements in paragraphs (a)(3) and (a)(4) of this section, as applicable.

(3) Deep-setting requirements. The following additional requirements apply to vessels engaged in deep-setting using a monofilament main longline north of 23° N. lat. that do not side-set. Owners and operators of these vessels must do the following:

(i) Employ a line shooter; and

(ii) Attach a weight of at least 45 g (1.6 oz) to each branch line within 1 m (3.3 ft) of the hook.

(4) Shallow-setting requirement. In addition to the requirements set forth in paragraphs (a)(1) and (a)(2) of this section, owners and operators of vessels engaged in shallow-setting that do not side-set must begin the deployment of longline gear at least 1 hour after local sunset and complete the deployment no later than local sunrise, using only the minimum vessel lights to conform with navigation rules and best safety practices.

(b) Short-tailed albatross handling techniques. If a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit, owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(2) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the bird; and

(4) Determine if the bird is alive or dead.

(i) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(ii) If alive, handle the bird in accordance with paragraphs (b)(5) through (11) of this section.

(5) Place the bird in a safe enclosed place;

(6) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(7) Follow the veterinary guidance regarding the handling and release of the bird;

(8) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(4) and (c)(5) of this section, and release the bird only if it meets the following criteria:

(i) Able to hold its head erect and respond to noise and motion stimuli;

(ii) Able to breathe without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(9) Any seabird that is released in accordance with paragraph (b)(8) of this section or under the guidance of a veterinarian must be placed on the sea surface;

(10) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water; and

(11) Complete the short-tailed albatross recovery data form issued by NMFS.

(c) Non-short-tailed albatross seabird handling techniques. If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(2) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the seabird;

(4) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(5) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(6) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(7) After recovered, release seabirds by placing them on the sea surface.

§ 665.816 American Samoa longline limited entry program.

(a) General. Under § 665.801(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) of this section.

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

(1) *Documented participation* means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

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

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest western Pacific pelagic MUS in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (*e.g.,* creel survey record or logbook), the applicant may issue a request to PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

(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) LOA. The maximum number will be reduced as Class B–1, C–1, and D–1 permits are issued under paragraph (f)(5) of this section.

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

(3) Class B–1: Maximum number of 14 permits for vessels over 40 ft (12.2 m) to 50 ft (15.2 m) LOA, 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) LOA.

(5) Class C–1: Maximum number of six permits for vessels over 50 ft (15.2) to 70 ft (21.3 m) LOA, 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) LOA.

(7) Class D–1: Maximum number of 6 permits for vessels over 70 ft (21.3 m) LOA, 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 LOA.

(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 western Pacific pelagic MUS 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 PIRO no later than 120 days after the effective date of this 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 §§ 665.13(c)(1), 665.13(d), and 665.13(f)(2). A complete application must include documented participation in the fishery in accordance with § 665.816(b)(1). 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 Assistant Regional Administrator for Sustainable Fisheries, PIRO, 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 a 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 § 665.801(o) 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. Any application for issuance of an additional permit must be submitted to PIRO no later than 120 days after the date of publication of the notice on the availability of additional permits in the **Federal Register**. A complete application must include documented participation in the fishery in accordance with § 665.816(b)(1). The Regional Administrator shall issue permits to persons according 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, 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 §§ 665.13(c)(1), 665.13(d), and 665.13(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 Assistant Regional Administrator for Sustainable Fisheries 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 of the date of the letter of notification, the Assistant Regional Administrator for Sustainable Fisheries 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 (g)(3) 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 § 665.801(o).

(h) Class B–1, C–1, and D–1 Permits.

(1) Permits of Class B–1, C–1, and D–1 will 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 § 665.801(o).

(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 paragraph (g) 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 transfer 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 § 665.13(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, 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 western Pacific pelagic MUS 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 western Pacific pelagic MUS harvested in the EEZ around American Samoa using longline gear.

(2) [Reserved]

(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 final rule, the Council shall consider appropriate revisions to the American 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.

§ 665.817 American Samoa pelagic fishery area management.

(a) Large vessel prohibited areas. A large vessel of the United States may not be used to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited areas as defined in paragraphs (b) and (c) of this section, except as allowed pursuant to an exemption issued under § 665.818.

(b) Tutuila Island, Manu'a Islands, and Rose Atoll (AS–1). The large vessel prohibited area around Tutuila Island, the Manu'a Islands, and Rose Atoll consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long.
AS–1–A	13°30′	167°25′
AS–1–B	15°13′	167°25′

and from Point AS–1–A westward along the latitude 13°30′ S. until intersecting the U.S. EEZ boundary with Samoa, and from Point AS–1–B westward along the latitude 15°13′ S. until intersecting the U.S. EEZ boundary with Samoa.

(c) Swains Island (AS–2). The large vessel prohibited area around Swains Island consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long
AS–2–A	11°48′	171°50′
AS–2–B	11°48′	171°20′

and from Point AS–2–A northward along the longitude 171°50′ W. until intersecting the U.S. EEZ boundary with Tokelau, and from Point AS–2–B northward along the longitude 170°20′ W. until intersecting the U.S. EEZ boundary with Tokelau.

§ 665.818 Exemptions for American Samoa large vessel prohibited areas.

(a) An exemption will be issued to a person who currently owns a large vessel to use that vessel to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited management areas, if the person seeking the exemption had been the owner of that vessel when it was registered for use with a Western Pacific general longline permit, and has made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997.

(b) A landing of western Pacific pelagic MUS for the purpose of this section must have been properly recorded on a NMFS Western Pacific Federal daily longline form that was submitted to NMFS, as required in § 665.14.

(c) An exemption is valid only for a vessel that was registered for use with a Western Pacific general longline permit and landed western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, or for a replacement vessel of equal or smaller LOA than the vessel that was initially registered for use with a Western Pacific general longline permit on or prior to November 13, 1997.

(d) An exemption is valid only for the vessel for which it is registered. An exemption not registered for use with a particular vessel may not be used.

(e) An exemption may not be transferred to another person.

(f) If more than one person, *e.g.,* a partnership or corporation, owned a large vessel when it was registered for use with a Western Pacific general longline permit and made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, an exemption issued under this section will be issued to only one person.

BILLING CODE 3510–22–P

FIGURE 1 TO PART 665. CARAPACE LENGTH OF LOBSTERS

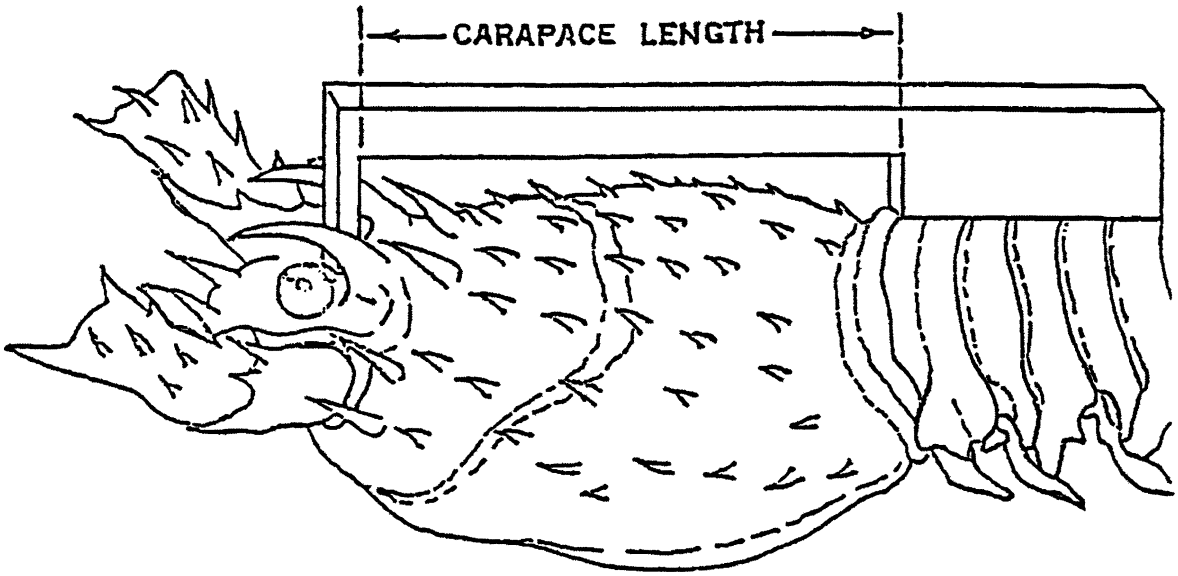


FIGURE 2 TO PART 665. LENGTH OF FISHING VESSELS

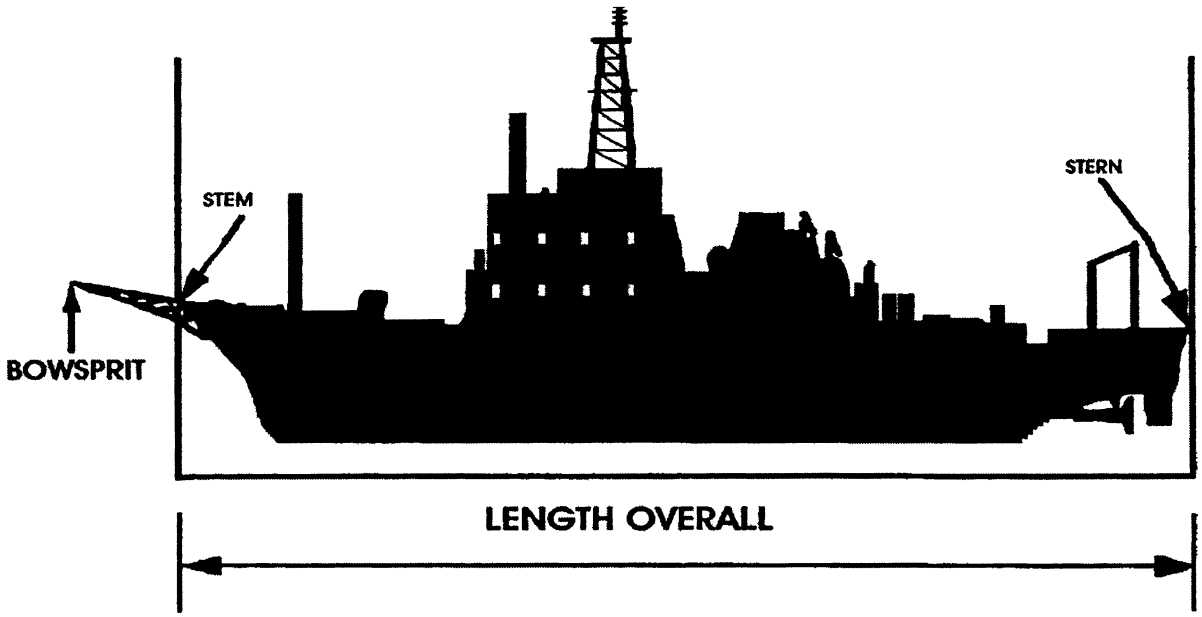
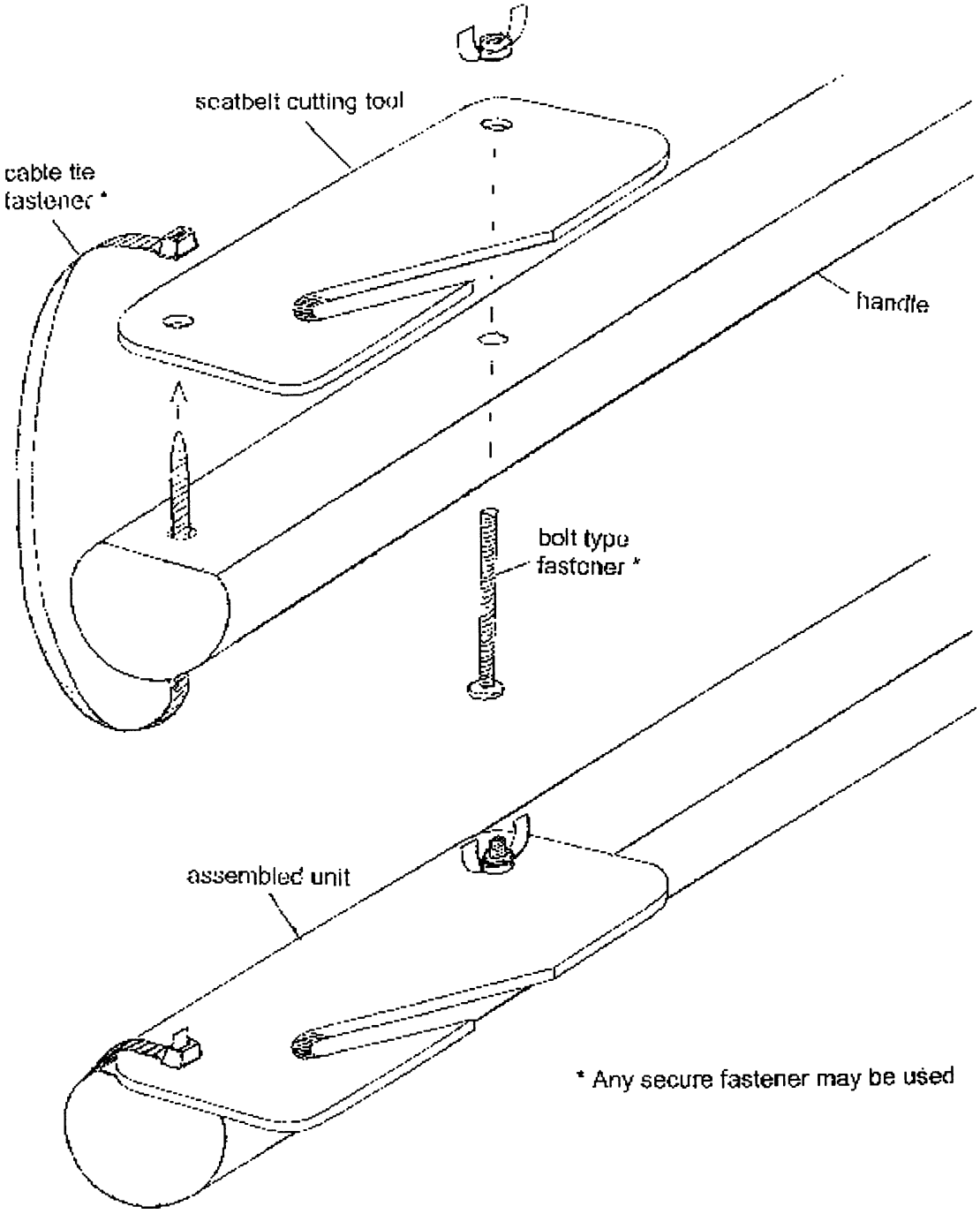


FIGURE 3 TO PART 665. SAMPLE FABRICATED ARCENEAUX LINE CLIPPER



[FR Doc. E9–26557 Filed 11–18–09; 8:45 am]
BILLING CODE 3510–22–C