

Vessel length	Capacity rating
290	242.39
291	243.02
292	243.65
293	244.28
294	244.91
295	245.55
296	246.18
297	246.81
298	247.44
299	248.07
300	248.70
301	249.33
302	249.96
303	250.59
304	251.22
305	251.86
306	252.49
307	253.12
308	253.75
309	254.38
310	255.01
311	255.64
312	256.27
313	256.90
314	257.54
315	258.17
316	258.80
317	259.43
318	260.06
319	260.69
320	261.32
321	261.95
322	262.58
323	263.21
324	263.85
325	264.48
326	265.11
327	265.74
328	266.37
329	267.00
330	267.63
331	268.26
332	268.89
333	269.52
334	270.16
335	270.79
336	271.42
337	272.05
338	272.68
339	273.31
340	273.94
341	274.57
342	275.20
343	275.83
344	276.47
345	277.10
346	277.73
347	278.36
348	278.99
349	279.62
350	280.25
351	280.88
352	281.51
353	282.14
354	282.78
355	283.41
356	284.04
357	284.67
358	285.30
359	285.93
360	286.56
361	287.19
362	287.82

Vessel length	Capacity rating
363	288.46
364	289.09
365	289.72
366	290.35
367	290.98
368	291.61
369	292.24
370	292.87
371	293.50
372	294.13
373	294.77
374	295.40
375	296.03
376	296.66
377	297.29
378	297.92
379	298.55
380	299.18
381	299.81
382	300.44
383	301.08
384	301.71
385	302.34
386	302.97
387	303.60
388	304.23
389	304.86
390	305.49
391	306.12
392	306.75
393	307.39
394	308.02
395	308.65
396	309.28
397	309.91
398	310.54
399	311.17
>400	311.80

**PART 665—FISHERIES IN THE WESTERN PACIFIC**

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FIGURE 1 TO PART 665—CARAPACE LENGTH OF LOBSTERS

FIGURE 2 TO PART 665—LENGTH OF FISHING VESSEL

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

SOURCE: 61 FR 34572, July 2, 1996, as amended at 71 FR 17988, Apr. 10, 2006.

EDITORIAL NOTE: Nomenclature changes to part 665 appear at 71 FR 30299, May 26, 2006.

### Subpart A—General

#### § 665.1 Purpose and scope.

(a) The regulations in this part govern fishing for Western Pacific fishery management unit species by vessels of the United States that operate or are based inside the outer boundary of the EEZ off Western Pacific States.

(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 part 665 of this chapter.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 665, subpart N of this chapter.

#### § 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, and that is consistent with this part and the FMPs implemented by

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this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 665.3 Reporting and recordkeeping.

Except for fisheries subject to subparts D and F of this part, 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.

**Subpart B—Western Pacific Fisheries—General**

SOURCE: 61 FR 34572, July 2, 1996, unless otherwise noted. Redesignated at 71 FR 17989, Apr. 10, 2006.

§ 665.11 Purpose and scope.

(a) This subpart contains regulations that are common to all Western Pacific fisheries managed under fishery management plans prepared by the Western Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations specific to individual fisheries are included in subparts C, D, E, F, and G of this part.

(c) Nothing in subparts C, D, E, F, and G of this part is intended to supercede any valid state or Federal regulations that are more restrictive than those published here.

[61 FR 34572, July 2, 1996, as amended at 69 FR 8341, Feb. 24, 2004; 71 FR 17989, Apr. 10, 2006]

§ 665.12 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, and in § 665.10,

the terms used in subparts B through G of this part have the following meanings:

*American Samoa longline limited access permit* means the permit required by § 665.21 to use a vessel shoreward of the outer boundary of the EEZ around American Samoa to fish for Pacific pelagic management unit species using longline gear or to land or transship Pacific pelagic management unit species that were caught in the EEZ around American Samoa using longline gear.

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

*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.

*Bottomfish FMP* means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region.

*Bottomfish management area* means the areas designated in § 665.69.

*Bottomfish management unit species* means the following fish:

Common name	Local name	Scientific name
<b>Snappers:</b>		
Silver jaw jobfish .....	Lehi (H); palu-gustusilvia (S) .....	<i>Aphareus rutilans.</i>
Gray jobfish .....	Uku (H); asoama (S) .....	<i>Aprion virescens.</i>
Squirrelfish snapper .....	Ehu (H); palu-malau (S) .....	<i>Etelis carbunculus.</i>
Longtail snapper .....	Onaga, ula'T1ula (H); palu-loa (S) .....	<i>Etelis coruscans.</i>
Blue stripe snapper .....	Ta'ape (H); savane (S); funai (G) .....	<i>Lutjanus kasmira.</i>
Yellowtail snapper .....	Palu-i iusama (S); yellowtail kalekale .....	<i>Pristipomoides auricilla.</i>
Pink snapper .....	Opakapaka (H); Palu-'tlena'lena (S); gadao (G).	<i>Pristipomoides.</i>
Yelloweye snapper .....	Palusina (S); yelloweye opakapaka .....	<i>Pristipomoides flavipinnis.</i>
Snapper .....	Kalekale (H) .....	<i>Pristipomoides sieboldii.</i>
Snapper .....	Gindai (H,G); palu-sega (S) .....	<i>Pristipomoides zonatus.</i>
<b>Jacks:</b>		
Giant trevally .....	White ulua (H); tarakito (G); sapo-anae (S).	<i>Caranx ignobilis.</i>
Black jack .....	Black ulua (H); tarakito (G); tafauli (S) .....	<i>Caranx lugubris.</i>
Thick lipped trevally .....	Pig ulua (H); butaguchi (H) .....	<i>Pseudocaranx dentex.</i>

Common name	Local name	Scientific name
Amberjack .....	Kahala (H) .....	<i>Seriola dumerili</i> .
Groupers:		
Blacktip grouper .....	Fausi (S); gadau (G) .....	<i>Epinephelus fasciatus</i> .
Sea bass .....	Hapu 'upu 'u (H) .....	<i>Epinephelus quernus</i> .
Lunartail grouper .....	Papa (S) .....	<i>Variola louti</i> .
Emperor fishes:		
Ambon emperor .....	Filoa-gutumumu (S) .....	<i>Lethrinus amboinensis</i> .
Redgill emperor .....	Filoa-palo 'omumu (S); mafuti (G) .....	<i>Lethrinus rubrioperculatus</i> .

NOTES: G—Guam; H—Hawaii; S—American Samoa.

*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 of this part).

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

*Commercial fishing*, as used in subpart D of this part, means fishing with the intent to sell all or part of the catch of lobsters. All lobster fishing in Crustaceans Permit Area 1 is considered commercial fishing.

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

*CNMI offshore area* means the portion of the U.S. EEZ around the CNMI extending seaward from a line drawn 3 nautical miles from the baseline around the CNMI from which the territorial sea is measured, to the outer boundary of the U.S. EEZ, which to the south means those points which are equidistant between Guam and the island of Rota in the CNMI.

*Council* means the Western Pacific Fishery Management Council.

*Coral reef ecosystem management unit species (Coral reef ecosystem MUS)* means all of the Currently Harvested Coral Reef Taxa listed in Table 3 and Potentially Harvested Coral Reef Taxa listed Table 4 of this part 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.

*Coral reef ecosystem regulatory area* means the U.S. EEZ waters around American Samoa, Guam, Hawaii, CNMI and the PRIA except for the portion of EEZ waters 0–3 miles around the CNMI, and EEZ waters around the NWHI west of 160°50' W. long.

*Crustaceans FMP* means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region.

*Crustaceans management area* means the EEZ waters around American Samoa, the CNMI, Guam, Hawaii, and the PRIA.

*Crustaceans management unit species* means spiny lobster (*Panulirus marginatus* or *Panulirus penicillatus*), slipper lobster (family *Scyllaridae*), and Kona crab (*Ranina ranina*).

*Crustaceans Permit Area 1 (Permit Area 1)* means the EEZ off the Northwestern Hawaiian Islands.

*Crustaceans Permit Area 2 (Permit Area 2)* means the EEZ off the main Hawaiian Islands.

*Crustaceans Permit Area 3 (Permit Area 3)* means the EEZ around Guam and American Samoa, and the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

*Crustaceans Permit Area 4 (Permit Area 4)* means the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

*Crustaceans Permit Area 1 VMS Sub-area* means an area within the EEZ off the NWHI 50 nm from the center geographical positions of the islands and reefs in the NWHI as follows: Nihoa Island 23°05' N. lat., 161°55' W. long.; Necker Island 23°35' N. lat., 164°40' W. long.; French Frigate Shoals 23°45' N. lat., 166°15' W. long.; Garner Pinnacles 25°00' N. lat., 168°00' W. long.; Maro Reef 25°25' N. lat., 170°35' W. long.; Laysan Island 25°45' N. lat., 171°45' W. long.; Lisianski Island 26°00' N. lat., 173°55' W. long.; Pearl and Hermes Reef 27°50' N. lat., 175°50' W. long.; Midway Islands 28°14' N. lat., 177°22' W. long.; and Kure Island 28°25' N. lat., 178°20' W. long. 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.

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

*Currently harvested coral reef taxa (CHCRT)* means coral reef associated species, families, or subfamilies, as described in Table 3 of this part, 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.

*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.

*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 subpart D of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving man-

agement unit species (such as the services provided by a wholesale auction facility).

*Fish dealer* means any person who:

(1) Obtains, with the intention to resell, Pacific pelagic management unit species, or portions thereof, that were harvested or received by a vessel that holds a permit or is otherwise regulated under subpart E of this part; or

(2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such management unit species (such as the services provided by a wholesale auction facility).

*Fishing gear*, as used in subpart D 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.

(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.

*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.

*Guam bottomfish permit* means the permit required by § 665.61(a)(4) to use a large vessel to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea of the bottomfish fishery management area.

*Harvest guideline* means a specified numerical harvest objective.

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

*Hawaii longline limited access permit* means the permit required by § 665.21 to use a vessel to fish for Pacific pelagic

management unit species with longline gear in the EEZ around Hawaii or to land or transship longline-caught Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

*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.

*Interested parties* means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under subpart D of this part, and any person who has notified the Regional Administrator of his or her interest in the procedures and decisions described in §§ 665.51 and 665.52, and who has specifically requested to be considered an “interested party.”

*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 §§ 665.22, 665.37, 665.38, 665.61, 665.62, and 665.70, any vessel equal to or greater than 50 ft (15.2 m) in length overall.

*Length overall (LOA) or length of a vessel* means, as used in §§ 665.21(i) and 665.22, 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.

*Lobster closed area* means an area of the EEZ that is closed to fishing for lobster.

*Lobster grounds* refers, singularly or collectively, to the following four areas in Crustaceans 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 Crustaceans Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

*Longline fishing prohibited area* means the portions of the EEZ in which longline fishing is prohibited as specified in § 665.26.

*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, 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.

*Low use marine protected area (MPA)* means an area of the U.S. EEZ where

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fishing operations have specific restrictions in order to protect the coral reef ecosystem, as specified under area restrictions.

*Main Hawaiian Islands* means the islands of the Hawaiian Islands Archipelago lying to the east of 161° W. long.

*Non-precious coral* means any species of coral other than those listed under the definition for precious coral in this section.

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

*Northwestern Hawaiian Islands (NWHI)* means the islands of the Hawaiian Islands 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 management unit species, precious corals and seamount groundfish, as defined in this section.

*Offloading* means removing 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 subparts C and D of this part and §665.61(i) through (m), 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 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 subpart F of this part and §665.61(c) through (h), the definition of “owner” in §600.10 of this chapter continues to apply.

*Pacific Pelagic Management Unit Species* means the following fish:

Common name	Scientific name
Mahimahi (dolphinfish) .....	<i>Coryphaena spp.</i>
Indo-Pacific blue marlin .....	<i>Makaira mazara</i>
Black marlin .....	<i>M. indica</i>
Striped marlin .....	<i>Tetrapturus audax</i>
Shorbill spearfish .....	<i>T. angustirostris</i>
Swordfish .....	<i>Xiphias gladius</i>
Sailfish .....	<i>Istiophorus platypterus</i>
Pelagic thresher shark .....	<i>Alapias pelagicus</i>
Bigeye thresher shark .....	<i>Alopias</i>
Common thresher shark .....	<i>Alopias vulpinus</i>
Silky shark .....	<i>Carcharhinus falciformis</i>
Oceanic whitetip shark .....	<i>Carcharhinus longimanus</i>

Common name	Scientific name
Blue shark .....	<i>Prionace glauca</i>
Shortfin mako shark .....	<i>Isurus oxyrinchus</i>
Longfin mako shark .....	<i>Isurus paucus</i>
Salmon shark .....	<i>Lamna ditropis</i>
Albacore .....	<i>Thunnus alalunga</i>
Bigeye tuna .....	<i>T. obesus</i>
Yellowfin tuna .....	<i>T. albacore</i>
Northern bluefin tuna .....	<i>T. thynnus</i>
Skipjack tuna .....	<i>Katsuwonus pelamis</i>
Kawakawa .....	<i>Euthynnus affinis</i>
Wahoo .....	<i>Acanthocybium solandri</i>
Moonfish .....	<i>Lampris spp.</i>
Oilfish family .....	<i>Gempylidae</i>
Pomfret .....	<i>family Bramidae</i>
Other tuna relatives .....	<i>Auxis spp., Scomber spp.; Allothunus spp.</i>

*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) bottomfish fishing permit* means the permit required by §665.61 to use a vessel to fish for bottomfish management unit species (MUS) 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.

*Pacific Remote Island Areas (PRIA) crustacean fishing permit* means the permit required by §665.41 to use a vessel to fish for crustacean management unit species (MUS) in the EEZ around the PRIA, or to land crustacean MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

*Pacific Remote Island Areas (PRIA) pelagic troll and handline fishing permit* means the permit required by §665.21 to use a vessel shoreward of the outer boundary of the EEZ around the PRIA to fish for Pacific pelagic management unit species using pelagic handline or troll fishing methods.

*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.

*Pelagic handline fishing* means fishing for pelagic management unit species from a stationary or drifting vessel

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using hook and line gear other than longline gear.

*Pelagic troll fishing (trolling)* means fishing for pelagic management unit species from a moving vessel using hook and line gear.

*Pelagics FMP* means the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region.

*Potentially harvested coral reef taxa (PHCRT)* means coral reef associated species, families, or subfamilies, as listed in Table 4 of this part, 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). Coral reef ecosystem management unit species that are not listed as management unit species, precious corals, seamount groundfish, as defined in this section, or listed as CHCRT in Table 3 of this part.

*Precious coral* means any coral of the genus *Corallium* in addition to the following species of corals:

Common name	Scientific name
Pink coral (also known as red coral).	<i>Corallium secundum</i> .
Pink coral (also known as red coral).	<i>Corallium regale</i> .
Pink coral (also known as red coral).	<i>Corallium laauense</i> .
Gold coral .....	<i>Gerardia</i> spp.
Gold coral .....	<i>Callogorgia gilberti</i> .
Gold coral .....	<i>Narella</i> spp.
Gold coral .....	<i>Calyptrophora</i> spp.
Bamboo coral .....	<i>Lepidisis olapa</i> .
Bamboo coral .....	<i>Acanella</i> spp.
Black coral .....	<i>Antipathes dichotoma</i> .
Black coral .....	<i>Antipathes grandis</i> .
Black coral .....	<i>Antipathes ulex</i> .

*Precious coral permit area* means the area encompassing the precious coral beds in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) *Established beds*. Makapuu (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.

(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*. (1) 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.

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

(iii) Permit Area X-P-G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(iv) Permit Area X-P-PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.

(v) 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.

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

*Protected species study zones* means the waters within a specified distance, designated by the Regional Administrator pursuant to §665.66, around the following islands of the NWHI and as measured from the following coordinates: Nihoa Island 23°05' N. lat., 161°55' W. long.; Necker Island 23°35' N. lat., 164°40' W. long.; French Frigate Shoals 23°45' N. lat., 166°15' W. long.; Gardner Pinnacles 25°00' N. lat., 168°00' W. long.; Maro Reef 25°25' N. lat., 170°35' W. long.; Laysan Island 25°45' N. lat., 171°45' W. long.; Lisianski Island 26°00' N. lat., 173°55' W. long.; Pearl and Hermes Reef 27°50' N. lat., 175°50' W. long.; Midway Island 28°14' N. lat., 177°22' W. long.; and Kure Island 28°25' N. lat., 178°20' W.

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long. The protected species study zones encompasses waters within 50 nm of the geographical coordinates listed above.

*Protected species zone* means an area, designated under §665.26, measured from the center geographical positions of certain islands and reefs in the NWHI, as follows: Nihoa Island 23°05' N. lat., 161°55' W. long.; Necker Island 23°35' N. lat., 164°40' W. long.; French Frigate Shoals 23°45' N. lat., 166°15' W. long.; Gardner Pinnacles 25°00' N. lat., 168°00' W. long.; Maro Reef 25°25' N. lat., 170°35' W. long.; Laysan Island 25°45' N. lat., 171°45' W. long.; Lisianski Island 26°00' N. lat., 173°55' W. long.; Pearl and Hermes Reef 27°50' N. lat., 175°50' W. long.; Midway Islands 28°14' N. lat., 177°22' W. long.; and Kure Island 28°25' N. lat., 178°20' W. long. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles 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.

*Receiving vessel permit* means a permit required by §665.21(c) for a receiving vessel to transship or land Pacific pelagic management unit species taken by other vessels using longline gear.

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

*Seamount groundfish* means the following species:

Common name	Scientific name
Armorhead .....	<i>Pentaceros richardsoni</i> .
Alfonsin .....	<i>Beryx splendens</i> .
Raffish .....	<i>Hyperoglyphe japonica</i> .

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

*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.

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

*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.

*Transship* means offloading or otherwise transferring management unit species or products thereof to a receiving vessel.

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

*U.S. harvested corals* means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

*Vessel monitoring system unit (VMS unit)* means the hardware and software owned by NMFS, installed on vessels by NMFS, and required by subpart C of this part to track and transmit the positions of longline vessels or the hardware and software used by vessels to track and transmit the positions of vessels permitted under subpart D of this part to fish in Crustaceans Permit Area 1.

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

*Western Pacific general longline permit* means the permit authorized under §665.21 to use a vessel shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, Johnston or Palmyra Atolls, Kingman Reef, or Wake, Jarvis, Baker or Howland Islands to fish for Pacific pelagic management unit species using longline gear or to land or to transship

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Pacific pelagic management unit species that were caught using longline gear.

[61 FR 34572, July 2, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 665.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 665.13 Permits and fees.

(a) *Applicability.* The requirements for permits for specific Western Pacific fisheries are set forth in subparts C, D, E, F, and G 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 Form may be obtained from the NMFS PIRO to apply for a permit or permits to operate in any of the fisheries regulated under subparts C, D, E, F, and G 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 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 C, D, E, and F of this part. A minimum of 60 days after the day PIRO receives a complete application should be allowed for processing a permit application for fisheries under subpart J 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 sub-

mitted 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, the Regional Administrator will issue a permit to an applicant who is eligible under §§ 665.21, 665.36, 665.41, 665.61, 665.601, or 665.8, or 665.602 as appropriate.

(f) *Fees.* (1) PIRO will not charge a fee for a permit issued under subpart D or F of this part, for a Ho'omalulu Zone limited access permit, or for a Guam bottomfish permit issued under § 665.61.

(2) PIRO will charge a fee for each application for a Hawaii longline limited access permit, Mau Zone limited access permit, coral reef ecosystem special permit, or an American Samoa longline limited access permit (including permit transfers and renewals). 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. 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 a Hawaii longline limited access permit, Mau Zone limited access permit, coral reef ecosystem special permit, or an American Samoa longline limited access permit.

(g) *Expiration.* (1) Permits issued under subparts C, D, E, F, and G of this part are valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

(2) Permits issued under subpart E of this part expire at 2400 local time on December 31.

(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 §§ 665.21(h), 665.41(e), or 665.61(e), or for registration of a permit for use with a replacement vessel

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under § 665.61(k), must be submitted to the 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 the 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 permit and administrative actions are specified in the relevant subparts of this part.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22812, Apr. 28, 1999; 69 FR 8342, Feb. 24, 2004; 70 FR 29651, May 24, 2005; 71 FR 64476, Nov. 2, 2006]

### § 665.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 665.61(a)(4), 665.81, or 665.602 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. 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 (a). The operator of any vessel subject to the requirements of §§ 665.21, 665.41, 665.61(a)(4), or 665.81 must submit the original logbook information for each day of the fishing trip to the Re-

gional Administrator within 72 hours of each landing of management unit species, unless the fishing was authorized under a PRIA troll and handline permit, a PRIA crustaceans fishing permit, a PRIA bottomfish permit, or a PRIA precious corals fishing permit, in which case the original logbook form for each day of fishing within the PRIA EEZ waters must be submitted to the Regional Administrator within 30 days of each landing of management unit species. For fisheries managed under § 665.602, the original logbook information for each day of the fishing trip must be submitted to the Regional Administrator within 30 days of each landing of management unit species.

(b) *Transshipment logbooks.* Any person subject to the requirements of § 665.21(c) or § 665.602(a)(2) 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 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 MUS.

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of § 665.41 must submit to the Regional Administrator, within 72 hours of offloading of crustaceans 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.

(d) *Packing or weigh-out slips.* The operator of any fishing vessel subject to the requirements of § 665.41 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).

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(e) *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.

(f) *Availability of records for inspection*—(1) *Pacific pelagic management unit species.* Upon request, any fish dealer must immediately provide an authorized officer access for inspecting and copying all records of purchases, sales, or other transactions involving 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 C of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner or 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) *Crustaceans 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 that are otherwise subject to subpart D 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 regu-

lations to maintain records of landings and sales for vessels regulated by this subpart and subpart E 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 subpart G 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 of this chapter

(g) *State reporting.* Any person who has a permit under § 665.21, 665.61, or 665.601 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 C, E and G of this part must maintain and submit those records in the exact manner required by state laws and regulations.

[61 FR 34572, July 2, 1996, as amended at 62 FR 27524, May 20, 1997; 67 FR 56501, Sept. 4, 2002; 69 FR 8343, Feb. 24, 2004; 71 FR 53607, Sept. 12, 2006; 71 FR 64476, Nov. 2, 2006; 72 FR 19125, Apr. 17, 2007]

### § 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.

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(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, 665.24, 665.47, and 665.605.

(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, 665.28, 665.49, or 665.65.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Administrator under § 665.28, § 665.49, or § 665.65, or under any provision in an EFP issued under § 665.17.

(k) Fail to notify officials as required in §§ 665.23, 665.28, 665.43, 665.63, and 665.603.

(l) Fish for, take or retain within a no-take MPA, defined in § 665.18, any bottomfish management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral, seamount groundfish or coral reef ecosystem MUS.

[61 FR 34572, July 2, 1996, as amended at 69 FR 8343, Feb. 24, 2004]

## § 665.16 Vessel identification.

(a) Each fishing vessel subject to this subpart 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 subpart and subparts C, D, E, and F of 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 vessels subject to Subpart F 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.

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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.

## § 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 subpart and subparts C, D, E, and F of 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 scientific 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 FMP.

(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

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the purposes of the EFP consistent with the objectives of the FMP.

(f) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, 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 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 Area restrictions.

(a) Fishing is prohibited in all no-take MPAs designated in this section.

(b) Anchoring by all fishing vessels over 50 ft (15.25 m) LOA is prohibited in the U.S. EEZ seaward of the Territory 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.

(c) *MPAs*—(1) *No-take MPAs.* The following U.S. EEZ waters are no-take MPAs:

(i) 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;

(ii) Landward of the 50-fm (91.5-m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

(2) *Low-use MPAs.* The following U.S. EEZ waters in the Western Pacific Region are low-use MPAs:

(i) 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.

(ii) [Reserved]

[69 FR 8343, Feb. 24, 2004]

### Subpart C—Western Pacific Pelagic Fisheries

SOURCE: 61 FR 34572, July 2, 1996, unless otherwise noted. Redesignated at 71 FR 17989, Apr. 10, 2006.

#### § 665.21 Permits.

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

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

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

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

(c) A vessel of the United States must be registered for use under a valid American Samoa longline limited access permit, in accordance with § 665.36, if that vessel is used:

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

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

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

(d) A vessel of the United States must be registered for use under a valid Western Pacific general longline permit, American Samoa longline limited access permit, or Hawaii longline limited access permit if that vessel is used:

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

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

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

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

(g) Any required permit must be 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.

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

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

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

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

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

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

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

(2) [Reserved]

(1) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

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

(n) *Permit appeals.* Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal must be in writing, must state the action(s) appealed, and the reasons therefor, 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 Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, to the extent such review would clarify the criteria in this part. Such decision will be based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (n)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Administrator.

(3) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final Agency action for purposes of the Administrative Procedure Act.

(4) In the case of a timely appeal from an American Samoa longline limited access permit initial permit decision, the Regional Administrator will issue the appellant a temporary American Samoa longline limited access

permit. A temporary permit will expire 20 days after the Regional Administrator's final decision on the appeal. In no event will a temporary permit be effective for longer than 60 days.

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

[70 FR 29651, May 24, 2005]

#### § 665.22 Prohibitions.

In addition to the prohibitions specified in Part 600 §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 Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in §665.3, provided that the person is required to do so by applicable state law or regulation.

(b) Use a vessel without a valid permit issued under the High Seas Fishing Compliance Act to fish for Pacific pelagic management unit species using longline gear, on the high seas, in violation of §§300.15 and 665.21(a) of this title.

(c) Use a vessel in the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of §665.21(b)(1).

(d) Use a vessel shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to land or transship Pacific pelagic management unit species that were harvested with longline gear, in violation of §665.21(b)(2).

(e) Use a vessel in the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of §665.21(c)(1).

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(f) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to land Pacific pelagic management unit species that were caught with longline gear within the EEZ around American Samoa, in violation of § 665.21(c)(2).

(g) Use a vessel within the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to transship Pacific pelagic management unit species that were caught with longline gear, in violation of § 665.21(c)(3).

(h) Use a vessel in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific 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 Pacific pelagic management unit species using longline gear, in violation of § 665.21(d)(1).

(i) Use a vessel shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific 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 Pacific pelagic management unit species that were harvested using longline gear, in violation of § 665.21(d)(2).

(j) Use a vessel in the Western Pacific Fishery Management Area to land or transship Pacific pelagic management unit species caught by other vessels using longline gear, without a valid receiving vessel permit registered for use with that vessel, in violation of § 665.21(e).

(k) Use a vessel in the EEZ around the PRIA employing handline or trolling methods to fish for Pacific pelagic management unit species without a valid PRIA pelagic troll and handline fishing permit registered for use for that vessel, in violation of § 665.21(f).

(l) Fish in the fishery after failing to comply with the notification requirements in § 665.23.

(m) Fail to comply with notification requirements set forth in § 665.23 or in any EFP issued under § 665.17.

(n) Fail to comply with a term or condition governing the vessel monitoring system when using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class C or D American Samoa longline limited access permit, in violation of § 665.25.

(o) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS, in violation of § 665.25(d)(2).

(p) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel, in violation of § 665.25(d)(2).

(q) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC in violation of § 665.25(d)(3).

(r) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit, in violation of § 665.25(d)(1).

(s) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit, in violation of § 665.25(d)(1).

(t) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer, in violation of § 665.28(f)(4).

(u) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC, in violation of § 665.25(e).

(v) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 665.17 or § 665.27, in violation of § 665.26.

(w) Fish for Pacific pelagic management unit species with longline gear within the protected species zone, in violation of § 665.26(b).

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(x) Fail to comply with a term or condition governing the observer program established in § 665.28 if using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class B, C or D American Samoa longline limited access permit, to fish for Pacific pelagic management unit species using longline gear.

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

(z) Fail to fish in accordance with the seabird take mitigation techniques set forth at § 665.35(a)(1) or § 665.35(a)(2) when operating a vessel registered for use under a Hawaii longline limited access permit in violation of § 665.35(a).

(aa) When operating a vessel registered for use under a American Samoa longline limited access permit or a Hawaii longline limited access permit, fail to comply with the sea turtle handling, resuscitation, and release requirements, in violation of § 665.32(b).

(bb) Engage in shallow-setting without a valid shallow-set certificate for each shallow set made, in violation of § 665.33(c).

(cc) Own or operate a vessel registered for use under any longline permit issued under § 665.21 while engaged in longline fishing for Pelagic Management Unit Species and fail to be certified for completion of a NMFS protected species workshop, in violation of § 665.34(a).

(dd) Own or operate a vessel registered for use under any longline permit issued under § 665.21 while engaged in longline fishing for Pelagic Management Unit Species without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof, in violation of § 665.34(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 § 665.23(a) indicated that deep-setting would be done, in violation of § 665.33(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 § 665.21, in violation of § 665.32.

(gg) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with 10° offset, in violation of § 665.33(f).

(hh) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with bait other than mackerel-type bait, in violation of § 665.33(g).

(ii) When operating a vessel registered for use under any longline permit issued under § 665.21 or operating a vessel using hooks to target Pelagic Management Unit Species while fishing under the Pelagics FMP, fail to comply with the sea turtle handling requirements, in violation of § 665.32(b).

(jj) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.21 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 § 665.33(f).

(kk) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.21 north of the Equator (0° lat.) with bait other than mackerel-type bait, in violation of § 665.33(g).

(ll) Operate a vessel registered for use under a Hawaii longline limited access permit while engaged in longline fishing without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof, in violation of § 665.34(d).

(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 § 665.35(a)(1) or (a)(2).

(nn) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel

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registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 665.35(a)(3).

(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 § 665.35(a)(4), (a)(5), or (a)(6).

(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 § 665.35(a)(7), through (a)(9).

(qq) Fail to 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 § 665.35(a)(1).

(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 § 665.35(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 § 665.33(b), in violation of § 665.33(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 § 665.33(b), in violation of § 665.33(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 § 665.35(c).

(xx) Use a large vessel to fish for Pelagic management unit species within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 665.38.

(yy) Fish for Pacific pelagic management unit species using gear prohibited

under § 665.30 or not permitted by an EFP issued under § 665.17.

[70 FR 29652, May 24, 2005, as amended at 70 FR 69284, Nov. 15, 2005; 70 FR 75080, Dec. 19, 2005; 72 FR 8291, Feb. 26, 2007]

### § 665.23 Notifications.

(a) The permit holder for any vessel registered for use under a Hawaii longline limited access permit or for any vessel greater than 40 ft (12.2 m) in length overall that is registered for use under an American Samoa longline limited access permit, or a designated agent, 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. For the purposes of this section, the vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8 a.m. and 5 p.m. (local time) on weekdays for NMFS to contact to arrange observer placement. Permit holders for vessels registered for use under Hawaii longline limited access permits must also provide notification of the trip type (either deep-setting or shallow-setting).

(b) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 665.12, must notify the NMFS Special-Agent-In-Charge immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

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(c) The permit holder for any American Samoa longline limited access permit, or an agent designated by the permit holder, must notify the Regional Administrator 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.

[70 FR 29654, May 24, 2005]

### § 665.24 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.

### § 665.25 Vessel monitoring system.

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

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

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vessel must carry the VMS unit after the date scheduled for installation.

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

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

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

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

(3) Not remove or relocate the VMS unit without prior approval from the SAC.

(e) *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.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29654, May 24, 2005]

### § 665.26 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.* The protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 665.12.

(c) *Main Hawaiian Islands.* (1) From February 1 through September 30 each year, the longline fishing prohibited

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area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	DW. 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 main Hawaiian Islands 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'

[61 FR 34572, July 2, 1996, as amended at 71 FR 10869, Mar. 3, 2006]

**§ 665.27 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 Pacific pelagic management unit species 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 Pacific pelagic management unit species 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.

(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 Pacific pelagic management unit species 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 the 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

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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 FMP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

**§ 665.28 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 agree 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 sea bird specimens as requested.

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(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 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.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

### **§ 665.29 Port privileges and transiting for unpermitted U.S. longline vessels.**

A U.S. longline fishing vessel that does not have a permit under subpart B of this part may enter waters of the fishery management area with Pacific pelagic management unit species on board, but may not land or transship any management unit species 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.

### **§ 665.30 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.

**§ 665.31 Framework adjustments to management measures.**

(a) *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.

(b) *Annual report.* By June 30 of each year, the Council-appointed Pelagics Plan 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).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or re-instituted. 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.

(d) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, 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 summa-

rizing 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.

**§ 665.32 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)(4) 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 § 665.21 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 the 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 § 665.21 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 FMP 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) *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 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 lbs (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 × 3 inches (7.62 cm × 7.62 cm).

(6) *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)(4)(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)(4)(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 1/4-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 3/4-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 - 60.69 cm) in length, and must have a T-handle 4 to

6 inches (10.16 - 15.24 cm) in length and 3/4 to 1 1/4 inches (1.90 - 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)(4)(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 - 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 - 15.24 cm) in length and 3/4 to 1 1/4 inches (1.90 - 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 - 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 - 22.86 cm) in length. The blades must be 1 3/4 (4.45 cm) in length and 5/8 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 - 30.48 cm) by 3/4 to 1 1/4 inches (1.90 - 3.18 cm) by 3/4 to 1 1/4 inches (1.90 - 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 1 3/4-inch (4.45 cm) long piece of vinyl tubing (3/4 inch (1.91 cm) outside diameter and 5/8 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 (5 1/2 - 8 inches (13.97 - 20.32 cm) in length)

and one small (3 1/2 - 4 1/2 inches (8.89 - 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 1/2-inch (1.27-cm) or 3/4-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 - 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), 1 1/4 inches (3.18 cm), 1 1/2 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 FMP, 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, transhipped or kept below deck only if NMFS requests the retention of a dead sea turtle for research.

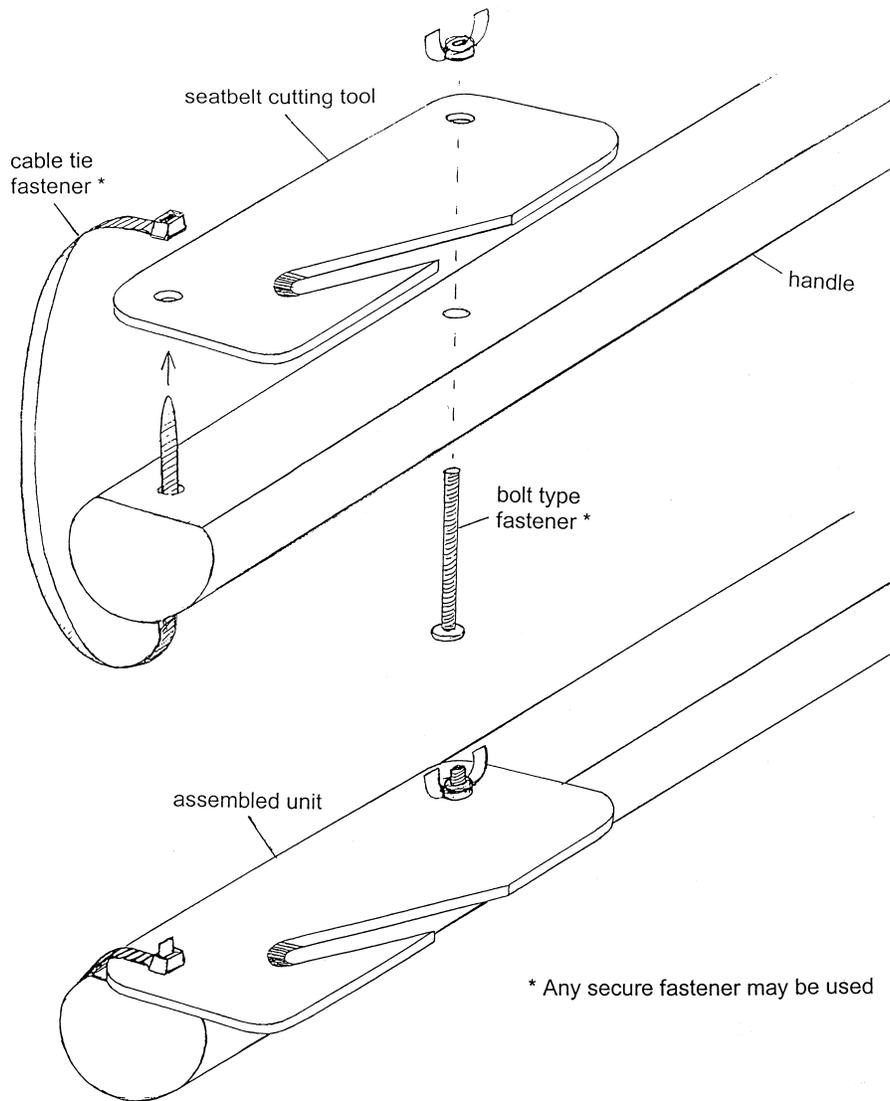


Figure 1 – Sample Fabricated Arceneaux Line Clipper

[65 FR 16347, Mar. 28, 2000, as amended at 67 FR 40236, June 12, 2002; 67 FR 48576, July 25, 2002; 69 FR 17351, Apr. 2, 2004; 70 FR 69284, Nov. 15, 2005]

**§ 665.33 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 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. The Regional Administrator will send shallow-set certificates valid for 2004 no later than June 1, 2004, based on permit holders as of May 1, 2004.

(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 the National Marine Fisheries Service 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 rule-making 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.

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(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)(3)(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 management unit species 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 § 665.23(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 § 665.21 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 is 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 § 665.21 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 § 665.23(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)(3)(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 § 665.23(a) that the vessel would engage in a deep-setting trip.

[69 FR 17352, Apr. 2, 2004, as amended at 70 FR 69285, Nov. 15, 2005; 72 FR 8291, Feb. 26, 2007]

### § 665.34 Protected species workshop.

(a) Each year, both the owner and the operator of a vessel registered for use under any longline permit issued under § 665.21 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

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under § 665.21 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 § 665.21 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.

[69 FR 17354, Apr. 2, 2004, as amended at 70 FR 69285, Nov. 15, 2005]

**§ 665.35 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 10 mm (0.4 in).

(2) *Alternative to side-setting.* Owners and operators of vessels that do not side-set must:

(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 (i) of this section;

(iii) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (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 (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; and

(vi) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS; and

(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:

(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;

(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 (b)(10) 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) Complete the short-tailed albatross recovery data form issued by NMFS.

(9) 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.

(10) Any seabird that is released in accordance with paragraph (b)(9) of this section or under the guidance of a veterinarian must be placed on the sea surface.

(11) 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.

(12) 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

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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.

[67 FR 34412, May 14, 2002, as amended at 69 FR 17354, Apr. 2, 2004; 70 FR 75080, Dec. 19, 2005]

### § 665.36 American Samoa longline limited entry program.

(a) *General.* Under § 665.21(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. With the exception of reductions in permits in vessel size Class A under paragraph (c)(1) of this section, the maximum number of permits will be capped at the number of initial permits actually issued under paragraph (f)(1) of this section.

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

(1) *Documented participation* means participation proved by, 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 Pacific pelagic management unit species 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 request 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) length overall. The maximum number will be reduced as Class B-1, C-1, and D-1 permits are issued under paragraph (e) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Prior to March 22, 2002, or

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

(f) *Initial permit issuance.* (1) Any application for issuance of an initial permit must be submitted to the Pacific Islands Regional Office no later than 120 days after the effective date of 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), (d) and (f)(2). A complete application must include documented participation in the fishery in accordance with § 665.36(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 § 665.21(n) of this subpart.

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

(g) *Additional permit issuance.* (1) If the number of permits issued in Class

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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 § 665.36(b)(1). The Regional Administrator shall issue permits to persons according to the following priority standard:

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

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

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

(2) Applications must be made, and application fees paid, in accordance with §§ 665.13(c)(1), (d), and (f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the 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 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 § 665.21(n).

(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,

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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 § 665.21(n).

(6) If a Class B-1, C-1, or D-1 permit is relinquished, revoked, or not renewed pursuant to paragraph (j)(1) of this section, the Regional Administrator shall make that permit available according to the procedure described in paragraphs (g)(1) through (g)(4) of this section.

(i) *Permit transfer.* The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. Applications for permit transfers must be submitted to the Regional Administrator within 30 days of the transferral date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 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(I)(2), and its implementing regulations, or

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

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

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

(i) For permit size Classes A or B: a total of 1,000 lb (455 kg) of Pacific pelagic management unit species harvested in the EEZ around American Samoa using longline gear, or

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

(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.

[70 FR 29654, May 24, 2005; 70 FR 33719, June 9, 2005]

**§ 665.37 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 Pacific pelagic management unit species 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 § 665.38.

(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

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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'	170°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.

[67 FR 4371, Jan. 30, 2002]

**§ 665.38 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 Pacific pelagic management unit species in the American Samoa large vessel prohibited management areas, if he or she had been the owner of that vessel when it was registered for use with a Western Pacific general longline permit and made at least one landing of Pacific pelagic management unit species in American Samoa on or prior to November 13, 1997.

(b) A landing of Pacific pelagic management unit species 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 Pacific pelagic management unit species 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.

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(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 Pacific pelagic management unit species in American Samoa on or prior to November 13, 1997, an exemption issued under this section will be issued to only one person.

[67 FR 4371, Jan. 30, 2002, as amended at 70 FR 29657, May 24, 2005]

### Subpart D—Western Pacific Crustacean Fisheries

SOURCE: 61 FR 34572, July 2, 1996, unless otherwise noted. Redesignated at 71 FR 17989, Apr. 10, 2006.

#### § 665.41 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. Only one permit will be assigned to any vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2, Permit Area 3, or Permit Area 4, must have a permit issued for that 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 limited access permit is valid for fishing only in Permit Area 1.

(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 the Pacific Islands Regional Office 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 the Pacific Islands Regional Office and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) *Number of permits.* 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, the Pacific Islands Regional Office 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

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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

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share in the vessel that the permit would cover.

[61 FR 34572, July 2, 1996. Redesignated at 71 FR 17989, Apr. 10, 2006 and amended at 71 FR 30299, May 26, 2006; 71 FR 53607, Sept. 12, 2006]

### § 665.42 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) 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 § 665.41;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 665.48;

(iii) From closed areas for lobsters, as specified in § 665.46;

(iv) During a closed season, as specified in § 665.45; or

(v) After the closure date, as specified in § 665.50, and until the fishery opens again in the following calendar year.

(vi) In a lobster grounds after closure of that grounds as specified in § 665.50(b).

(2) Fail to report before landing or offloading as specified in § 665.43.

(3) Fail to comply with any protective measures implemented under § 665.51 or § 665.52.

(4) Leave a trap unattended in the Management Area except as provided in § 665.48.

(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 § 665.48.

(6) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 665.50, 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(f)(2).

(8) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustaceans Permit Area 1 when fishing for lobster is prohibited as specified

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in §§ 665.45(a), 665.50, 665.51, or 665.52, except as allowed under § 665.48(a)(7).

(9) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustaceans Permit Area 1 VMS Sub-area when fishing for lobsters is prohibited as specified in §§ 665.45(a), 665.50, 665.51, and 665.52, except as allowed under § 665.48(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 § 665.50(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 § 665.48; or

(ii) During a closed season, as specified in § 665.45(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 § 665.44.

(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 § 665.44.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 665.44.

(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 main Hawaiian Islands is prohib-

ited during the months of May, June, July, and August.

[61 FR 34572, July 2, 1996, as amended at 62 FR 35449, July 1, 1997; 63 FR 20540, Apr. 27, 1998; 64 FR 36822, July 8, 1999; 70 FR 29657, May 24, 2005]

### § 665.43 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 off-loading, the location and time that off-loading 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.

### § 665.44 Lobster size and condition restrictions—Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 3 of this subpart).

(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.

### § 665.45 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.

[61 FR 34572, July 2, 1996, as amended at 63 FR 20540, Apr. 27, 1998]

### § 665.46 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.

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### § 665.47 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.

### § 665.48 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 the NMFS may enter Crustaceans Permit Area 1 with lobster traps on board on or after June 25, but must remain outside the Crustaceans Permit Area 1 VMS Subarea until the NWHI lobster season opens on July 1.

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(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 Crustaceans Permit Area 1, including Crustaceans 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 § 665.50, 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.

[61 FR 34572, July 2, 1996, as amended at 62 FR 35450, July 1, 1997; 63 FR 20540, Apr. 27, 1998; 64 FR 36822, July 8, 1999; 70 FR 29657, May 24, 2005]

§ 665.49 **At-sea observer coverage.**

All fishing vessels subject to this subpart and subpart B of this part must carry an observer when requested to do so by the Regional Administrator.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

### § 665.50 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

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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 FMP 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 §665.48(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 Crustaceans 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 Crustaceans 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.

[61 FR 34572, July 2, 1996, as amended at 62 FR 35450, July 1, 1997; 63 FR 20541, Apr. 27, 1998; 64 FR 36822, July 8, 1999]

### § 665.51 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 inci-

dent 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 Crustaceans FMP 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 interested parties will be notified 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

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(ii) Notification of repeal and the reasons for the repeal will be published in the FEDERAL REGISTER.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

### § 665.52 Monk seal emergency protective measures.

(a) *Determination of emergency.* If, at any time during the process described in § 665.51, 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—

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

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

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

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

(2) NMFS will publish the emergency protective measures in the FEDERAL REGISTER.

(3) 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.

(c) *Effective dates.* (1) 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.

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

(3) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 665.51.

### § 665.53 Framework procedures.

(a) *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.

(b) *Annual report.* By June 30 of each year, the Council-appointed Crustaceans Plan 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).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstated. 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.

(d) *Procedure for New Measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, 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

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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.

### § 665.54 Five-year review.

The Council, in cooperation with NMFS, will conduct a review of the effectiveness and impacts of the NWHI management program, including biological, economic, and social aspects of the fishery, by July 1, 2001.

## Subpart E—Bottomfish and Seamount Groundfish Fisheries

SOURCE: 61 FR 34572, July 2, 1996, unless otherwise noted. Redesignated at 71 FR 17989, Apr. 10, 2006.

### § 665.61 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for bottomfish management unit species in the Northwestern Hawaiian Islands Subarea, Pacific Remote Island Areas Subarea, or Guam Subarea must have a permit issued under this section and the permit must be registered for use with that vessel.

(2) The PIRO will not register a single vessel for use with a Ho'omalau Zone permit and a Mau Zone permit at the same time.

(3) Mau Zone permits issued before June 14, 1999 become invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (i) 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'omalau Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(4) A fishing vessel of the United States must be registered for use under

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a Guam bottomfish permit if that vessel is a large vessel and is used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea of the bottomfish fishery management area.

(b) *Submission.* (1) An application for a permit required under this section must be submitted to the PIRO as described in § 665.13. (2) *Ho'omalau Zone limited access permit.* In addition to an application under § 665.13(c), each applicant for a Ho'omalau Zone permit must also submit a supplementary information sheet provided by the 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.* The 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 the 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.

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(c) *Sale or transfer of Ho'omalū limited access permits to new vessel owners.* (1) A Ho'omalū zone permit may not be sold or otherwise transferred to a new owner.

(2) A Ho'omalū 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'omalū 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) in length. 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) in length. 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'omalū Zone limited access permit renewal.* (1) A qualifying landing for Ho'omalū Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of bottomfish management unit species from the Ho'omalū Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho'omalū Zone, of which at least 50 percent by weight was bottomfish man-

agement unit species. 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 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'omalū Zone limited access permits.* The Regional Administrator may issue new Ho'omalū Zone limited access permits under § 665.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho'omalū Zone are able to support additional fishing effort.

(g) *Eligibility for new Ho'omalū 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 bottomfish management unit species, regardless of weight, if made on or before August 7, 1985;

(B) At least 2,500 lb (1,134 kg) of bottomfish management unit species, 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 main Hawaiian Islands.

(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 an Ho'omaluu 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) The 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 bottomfish management unit species 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 bottomfish management unit species during 1991, shall be assigned 0.5 point.

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

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

(v) An owner whose permitted vessel made at least one qualifying landing of

bottomfish management unit species during 1994, shall be assigned 2.0 points.

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

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

(viii) Before the 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 § 665.61(h), a "qualifying landing" means any amount of bottomfish management unit species 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 the PIRO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(5) For each of paragraphs (h)(1)(i) through (h)(1)(viii) of this section, the 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

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paragraphs (h)(1)(i) through (h)(1)(viii) of this section (including joint owners, partners, or shareholders of a corporate owner), the 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 the 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 the PIRO.

(2) A Mau Zone permit holder may apply under § 665.13 to the 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 the 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 the 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 bottomfish management unit species per trip during the calendar year. Only one landing of bottomfish management unit species 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 D 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

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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 FMP 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 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.

[64 FR 22812, Apr. 28, 1999, as amended at 70 FR 29657, May 24, 2005; 71 FR 53607, Sept. 12, 2006; 71 FR 64477, Nov. 2, 2006]

### § 665.62 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 bottomfish or seamount groundfish using gear prohibited under § 665.64.

(b) Fish for, or retain on board a vessel, bottomfish management unit species in the Ho'omalū Zone, the Mau Zone, or the Pacific Remote Island Areas 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'omalū Zone permit without com-

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pleting a protected species workshop conducted by NMFS, as required by § 665.61.

(d) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalū Zone, as required by § 665.63.

(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 § 665.63.

(f) Falsify or fail to make or file all reports of bottomfish management unit species landings taken in the Pacific Remote Island Areas, containing all data in the exact manner, as specified in § 665.14(a).

(g) 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 bottomfish management unit species shoreward of the outer boundary of the Guam sub-area of the bottomfish fishery management area in violation of § 665.61(a).

(h) Use a large vessel to fish for bottomfish management unit species within the Guam large vessel bottomfish prohibited area, as defined in § 665.70(b).

(i) Land or transship, shoreward of the outer boundary of the Guam sub-area of the bottomfish fishery management area, bottomfish management unit species that were harvested in violation of § 665.62(h).

[61 FR 34572, July 2, 1996, as amended at 64 FR 22814, Apr. 28, 1999; 70 FR 29657, May 24, 2005; 71 FR 53607, Sept. 12, 2006; 71 FR 64477, Nov. 2, 2006]

### § 665.63 Notification.

(a) The owner or operator of a fishing vessel subject to this subpart must inform the 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 § 665.12. 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.

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(b) The operator of a fishing vessel that has taken bottomfish in the Ho'omalau 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.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

### § 665.64 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for bottomfish and seamount groundfish 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 § 665.61 or otherwise established to be fishing for bottomfish or seamount groundfish in the management sub-areas is prohibited.

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

### § 665.65 At-sea observer coverage.

(a) All fishing vessels subject to this subpart must carry an observer when directed to do so by the Regional Administrator.

(b) The 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. 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 of futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other gallery 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 tem-

porary 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.

[61 FR 34572, July 2, 1996, as amended at 70 FR 29657, May 24, 2005]

### § 665.66 Protected species conservation.

The Regional Administrator may change the size of the protected species study zones defined in § 665.12 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.

### § 665.67 Framework for regulatory adjustments.

(a) *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:

(1) Fishery performance data.

(2) Summary of recent research and survey results.

(3) Habitat conditions and recent alterations.

(4) Enforcement activities and problems.

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

(6) State and territorial management actions.

(7) 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:

- (i) Mean size of the catch of any species in any area is a pre-reproductive size.
- (ii) Ratio of fishing mortality to natural mortality for any species.
- (iii) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.
- (iv) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.
- (v) Substantial decline in ex-vessel revenue relative to baseline levels.
- (vi) Significant shift in the relative proportions of gear in any one area.
- (vii) Significant change in the frozen/fresh components of the bottomfish catch.
- (viii) Entry/exit of fishermen in any area.
- (ix) Per-trip costs for bottomfishing exceed per-trip revenues for a significant percentage of trips.
- (x) Significant decline or increase in total bottomfish landings in any area.
- (xi) Change in species composition of the bottomfish catch in any area.
- (xii) Research results.
- (xiii) Habitat degradation or environmental problems.
- (xiv) Reported interactions between bottomfishing operations and protected species in the NWHI.

(8) Recommendations for Council action.

(9) Estimated impacts of recommended action.

(b) *Recommendation of management action.* (1) 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.

(2) 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.

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

(c) *Federal management action.* (1) 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.

(2) 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.

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

(4) The Regional Administrator and the Assistant Administrator will make their decisions in accord with the Magnuson Act, other applicable law, and the Bottomfish FMP.

(5) To minimize conflicts between the Federal and state management systems, the Council will use the procedures in paragraph (b) 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.

(d) *Access limitation procedures.* (1) Access limitation may be adopted under this paragraph (d) only for the NWHI, American Samoa, and Guam.

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

(i) 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

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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.

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

(iii) 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.

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

(e) *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 FMP 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.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22814, Apr. 28, 1999]

### § 665.68 Fishing moratorium on Hancock Seamount.

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

[69 FR 51401, Aug. 19, 2004]

### § 665.69 Management subareas.

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

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

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

(i) Ho'omalulu 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.

(4) Guam means the EEZ seaward of the Territory of Guam.

(5) American Samoa means the EEZ seaward of the Territory of American Samoa.

(6) CNMI Inshore Area means that portion of the EEZ shoreward of 3 nautical miles of the shoreline of the CNMI.

(7) CNMI Offshore Area means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(8) Pacific Remote Island Areas means that portion of the EEZ seaward of the Pacific Remote Island Areas, with the exception of Midway Atoll.

(b) The inner boundary of each fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, the Territory of Guam, the CNMI, and the PRIA.

(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. The boundary between the fishery management areas of Guam and the CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI.

[61 FR 34572, July 2, 1996. Redesignated at 71 FR 17989, Apr. 10, 2006, as amended by 71 FR 53607, Sept. 12, 2006]

### § 665.70 Bottomfish fishery area management.

(a) *Large vessel bottomfish prohibited area.* A large vessel of the United States may not be used to fish for bottomfish management unit species in any large vessel bottomfish prohibited area as defined in paragraph (b) of this section.

**§ 665.81**

(b) *Guam large vessel bottomfish prohibited area (Area GU-1).* The large vessel bottomfish prohibited area around Guam means the waters of the US EEZ 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'

[71 FR 64477, Nov. 2, 2006]

**Subpart F—Precious Corals Fisheries**

SOURCE: 61 FR 34572, July 2, 1996, unless otherwise noted. Redesignated at 71 FR 17989, Apr. 10, 2006.

**§ 665.81 Permits.**

(a) Any vessel of the United States fishing for, taking, or retaining precious coral in any 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 § 665.12.

(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 corals 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 corals fishery are contained in § 665.13.

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**§ 665.82 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 precious coral in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.88.

(2) In refugia specified in § 665.12.

(3) In a bed for which the quota specified in § 665.84 has been attained.

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

(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 § 665.86 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.

[61 FR 34572, July 2, 1996, as amended at 67 FR 11945, Mar. 18, 2002]

**§ 665.83 Seasons.**

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a 2-year fishing period that begins July 1 and ends June 30, 2 years later.

**§ 665.84 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 Table 1 of this part. 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 non-selective coral harvesting after the

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quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas 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 each of the three 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 that year.

(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 through 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.

### § 665.85 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 Makapuu Bed, NMFS will issue a field order closing the bed involved by publication of an action in the FEDERAL REGISTER, and through appropriate news media. Any such field order 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.

### § 665.86 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.* (1) Except as provided in paragraph (b)(2) of this section, 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).

(2) The NMFS PIRO will issue an exemption permitting hand-harvesting of live black coral that has attained a minimum base diameter of 3/4 inches (1.91 cm), measured on the widest portion of the skeleton at a location just above the holdfast, to any person who reported a landing of black coral to the State of Hawaii within 5 years before April 17, 2002.

[67 FR 11945, Mar. 18, 2002, as amended at 70 FR 29657, May 24, 2005]

### § 665.87 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.

### § 665.88 Gear restrictions.

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

[67 FR 11945, Mar. 18, 2002]

### § 665.89 Framework procedures.

(a) *Introduction.* Established management measures may be revised and new management measures may be established and/or revised through rule-making 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.

(b) *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

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the urgency and effects of such action(s).

(c) *Procedure for established measures.*

(1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) According to the framework procedures of Amendment 3 to the FMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or re-instituted. 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.

(d) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 3 to the FMP, 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.

[63 FR 55810, Oct. 19, 1998]

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### Subpart G—Western Pacific Coral Reef Ecosystem Fisheries

SOURCE: 69 FR 8343, Feb. 24, 2004, unless otherwise noted. Redesignated at 71 FR 17989, Apr. 10, 2006.

#### § 665.601 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Coral reef ecosystem regulatory area, fishing authorized under this subpart 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.

#### § 665.602 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 coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Coral reef ecosystem MUS in low-use MPAs as defined in § 665.18;

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

(iii) Coral reef ecosystem MUS in the coral reef ecosystem regulatory 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 coral reef ecosystem regulatory area to land or tranship PHCRT, or any 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 the Bottomfish and Seamount Groundfish FMP, Pelagics FMP, Crustaceans FMP or Precious Corals FMP who incidentally catches coral reef ecosystem MUS while fishing for bottomfish management unit species, crustaceans management unit species,

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Pacific pelagic management unit species, precious coral, or seamount groundfish.

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

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

(b) *Validity.* Each permit will be valid for fishing only in the fishery management subarea 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 FMP,

(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 FMP, 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 FMP, 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 FMP.

(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 FMP, 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 therefor, 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,

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at the discretion of the hearing officer, other interested parties, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(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.

### § 665.603 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 coral reef ecosystem MUS in any low-use MPA as defined in § 665.18(c)(1) and (c)(2) 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 § 600.602 of this chapter;

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

(b) Fish for, take, or retain any 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 § 665.604.

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

(4) In violation of any permit issued under § 665.13 or § 665.601.

(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.

### § 665.604 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.

### § 665.605 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) 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 regulatory area is prohibited.

(c) 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 FMP 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 § 665.604 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.

**§ 665.606 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 § 665.601 or that is otherwise established to be fishing for coral reef ecosystem MUS in the regulatory area.

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

**§ 665.607 Framework for regulatory adjustments.**

(a) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, or for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions;

(2) Following framework procedures of the CREFMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, pub-

lic discussion and consideration of public comment. NMFS may implement the Council's recommendation by rule-making if approved by the Regional Administrator.

(b) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/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;

(2) Following the framework procedures of the FMP, 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 rule making if approved by the Regional Administrator.

(i) 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.

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

(iii) The Regional Administrator and the Assistant Administrator will make their decisions in accordance with the

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Magnuson-Stevens Act, other applicable laws, and the CREFMP.

(iv) To minimize conflicts between the Federal and state/territorial/commonwealth management systems, the Council will use the procedures in paragraph (a)(2) in this section 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.

**§ 665.608 Regulatory area.**

(a) The regulations in this subpart govern fishing for coral reef ecosystem management unit species by vessels of the United States or persons who operate or are based inside the outer boundary of the U.S. EEZ off:

(1) The Hawaiian Islands Archipelago lying to the east of 160°50' W. long.

(2) Guam.

(3) American Samoa.

(4) Offshore area of the CNMI or that portion of the U.S. EEZ around the CNMI between three nautical miles offshore and the outer boundary of the U.S. EEZ.

(5) Baker Island, Howland Island, Jarvis Island, Wake Island, Johnston Atoll, Palmyra Atoll and Kingman Reef.

(b) The inner boundary of the regulatory area is as follows:

(1) The shoreline of Baker Island, Howland Island, Jarvis Island, Wake Island, Johnston Atoll, Palmyra Atoll and Kingman Reef.

(2) The seaward boundaries of the State of Hawaii, the Territory of Guam, the Territory of American Samoa; and

(3) A line three nautical miles seaward from the shoreline of the CNMI.

(c) The outer boundary of the regulatory area is the outer boundary of the U.S. EEZ or adjacent international maritime boundaries. The CNMI and Guam regulatory area is divided by a line intersecting these two points: 148°

E. long., 12° N. lat., and 142° E. long., 16° N. lat.

**§ 665.609 Annual reports**

(a) *Annual reports.* By July 31 of each year, a Council-appointed coral reef ecosystem plan team will prepare an annual report on coral reef fisheries of the western Pacific region. The report will contain, among other things, fishery performance data, summaries of new information and assessments of need for Council action.

(b) *Recommendation for Council action.* (1) 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;

(2) 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.

**TABLE 1 TO PART 665—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS**

Name of coral bed	Type of bed	Harvest quota	Number of years
Makapu'u	Established	P—2,000 kg	2
		G—Zero (0 kg)	n/a
		B—500 kg	2
Ke-ahole Point	Conditional	P—67 kg	1
		G—20 kg	1
		B—17 kg	1
Kaena Point	Conditional	P—67 kg	1
		G—20 kg	1
		B—17 kg	1
Brooks Bank	Conditional	P—17 kg	1
		G—133 kg	1
		B—111 kg	1
180 Fathom Bank	Conditional	P—222 kg	1
		G—67 kg	1
Westpac Bed	Refugium	B—56 kg	1
		Zero (0 kg)	n/a
		X—1,000 kg (all species combined except black corals) per area	1
Hawaii, American, Samoa, Guam, U.S. Pacific Island possessions.	Exploratory		

Notes:  
 1. Types of corals: P = Pink G = Gold B = Bamboo  
 2. No authorized fishing for coral in refugia

[67 FR 11945, Mar. 18, 2002]

TABLE 2 TO PART 665—CURRENTLY HARVESTED CORAL REEF TAXA

Family name	Common name (scientific name)
Acanthuridae (Surgeonfishes) .....	Orange-spot surgeonfish ( <i>Acanthurus olivaceus</i> ) Yellowfin surgeonfish ( <i>Acanthurus xanthopterus</i> ) Convict tang ( <i>Acanthurus triostegus</i> ) Eye-striped surgeonfish ( <i>Acanthurus dussumieri</i> ) Blue-lined surgeon ( <i>Acanthurus nigroris</i> ) Whitebar surgeonfish ( <i>Acanthurus leucopareius</i> ) Blue-banded surgeonfish ( <i>Acanthurus lineatus</i> ) Blackstreak surgeonfish ( <i>Acanthurus nigricauda</i> ) Whitecheek surgeonfish ( <i>Acanthurus nigricans</i> ) White-spotted surgeonfish ( <i>Acanthurus guttatus</i> ) Ringtail surgeonfish ( <i>Acanthurus blochii</i> ) Brown surgeonfish ( <i>Acanthurus nigrofuscus</i> ) Elongate surgeonfish ( <i>Acanthurus mata</i> ) Mimic surgeonfish ( <i>Acanthurus pyroferus</i> ) Yellow-eyed surgeonfish ( <i>Ctenochaetus strigosus</i> ) Striped bristletooth ( <i>Ctenochaetus striatus</i> ) Twospot bristletooth ( <i>Ctenochaetus binotatus</i> ) Bluespine unicornfish ( <i>Naso unicornus</i> ) Orangespine unicornfish ( <i>Naso lituratus</i> ) Humpnose unicornfish ( <i>Naso tuberosus</i> ) Black tongue unicornfish ( <i>Naso hexacanthus</i> ) Bignose unicornfish ( <i>Naso vlamingii</i> ) Whitemargin unicornfish ( <i>Naso annulatus</i> ) Spotted unicornfish ( <i>Naso brevirostris</i> ) Humpback unicornfish ( <i>Naso brachycentron</i> ) Barred unicornfish ( <i>Naso thynnoides</i> ) Gray unicornfish ( <i>Naso caesus</i> )
Balistidae (Triggerfishes) .....	Titan triggerfish ( <i>Balistoides viridescens</i> ) Clown triggerfish ( <i>Balistoides conspicillum</i> ) Orangestriped triggerfish ( <i>Balistapus undulatus</i> ) Pinktail triggerfish ( <i>Melichthys vidua</i> ) Black triggerfish ( <i>Melichthys niger</i> ) Blue Triggerfish ( <i>Pseudobalistes fucus</i> ) Picassofish ( <i>Rhinacanthus aculeatus</i> ) Wedge Picassofish ( <i>Balistoides rectangulus</i> ) Bridled triggerfish ( <i>Sufflamen fraenatus</i> )
Carangidae (Jacks) .....	Bigeye scad ( <i>Selar crumenophthalmus</i> ) Mackerel scad ( <i>Decapterus macarellus</i> )
Carcharhinidae (Sharks) .....	Grey reef shark ( <i>Carcharhinus amblyrhynchos</i> ) Silvertip shark ( <i>Carcharhinus albimarginatus</i> ) Galapagos shark ( <i>Carcharhinus galapagensis</i> ) Blacktip reef shark ( <i>Carcharhinus melanopterus</i> ) Whitetail reef shark ( <i>Triaenodon obesus</i> ) Bigscale soldierfish ( <i>Myripristis berndti</i> ) Bronze soldierfish ( <i>Myripristis adusta</i> ) Blotcheye soldierfish ( <i>Myripristis murdjan</i> ) Brick soldierfish ( <i>Myripristis amaena</i> ) Scarlet soldierfish ( <i>Myripristis pralinia</i> ) Violet soldierfish ( <i>Myripristis violacea</i> ) Whitetail soldierfish ( <i>Myripristis vittata</i> ) Yellowfin soldierfish ( <i>Myripristis chryseres</i> ) Pearty soldierfish ( <i>Myripristis kuntee</i> ) Double tooth squirrel fish ( <i>Myripristis hexagona</i> ) Tailspot squirrelfish ( <i>Sargocentron caudimaculatum</i> ) Blackspot squirrelfish ( <i>Sargocentron melanospilos</i> ) File-lined squirrelfish ( <i>Sargocentron microstoma</i> ) Pink squirrelfish ( <i>Sargocentron tieroides</i> ) Crown squirrelfish ( <i>Sargocentron diadema</i> ) Peppered squirrelfish ( <i>Sargocentron punctatissimum</i> ) Blue-lined squirrelfish ( <i>Sargocentron tierre</i> ) Hawaiian squirrelfish ( <i>Sargocentron xantherythrum</i> ) Squirrelfish ( <i>Sargocentron furcatum</i> ) Saber or Long jaw squirrelfish ( <i>Sargocentron spiniferum</i> ) Spotfin squirrelfish ( <i>Neoniphon</i> spp.)
Kuhliidae ( <i>Flag-tails</i> ) .....	Hawaiian flag-tail ( <i>Kuhlia sandvicensis</i> ) Barred flag-tail ( <i>Kuhlia mugil</i> )
Kyphosidae Rudderfish .....	Rudderfish ( <i>Kyphosus biggibus</i> ) Rudderfish ( <i>Kyphosus cinerascens</i> ) Rudderfish ( <i>Kyphosus vaigienses</i> )
Labridae ( <i>Wrasses</i> ) .....	Saddleback hogfish ( <i>Bodianus bilunulatus</i> ) Napoleon wrasse ( <i>Cheilinus undulatus</i> ) Triple-tail wrasse ( <i>Cheilinus trilobatus</i> )

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Family name	Common name (scientific name)
	Floral wrasse ( <i>Cheilinus chlorourus</i> )
	Harlequin tuskfish ( <i>Cheilinus fasciatus</i> )
	Ring-tailed wrasse ( <i>Oxycheilinus unifasciatus</i> )
	Bandcheek wrasse ( <i>Oxycheilinus diagrammus</i> )
	Arenatus wrasse ( <i>Oxycheilinus arenatus</i> )
	Razor wrasse ( <i>Xyrichtys pavo</i> )
	Whitepatch wrasse ( <i>Xyrichtes aneitensis</i> )
	Cigar wrasse ( <i>Cheilio inermis</i> )
	Blackeye thicklip ( <i>Hemigymnus melapterus</i> )
	Barred thicklip ( <i>Hemigymnus fasciatus</i> )
	Three-spot wrasse ( <i>Halichoeres trimaculatus</i> )
	Checkerboard wrasse ( <i>Halichoeres hortulanus</i> )
	Weedy surge wrasse ( <i>Halichoeres margaritaceus</i> )
	Goldstripe wrasse ( <i>Halichoeres zeylonicus</i> )
	Surge wrasse ( <i>Thalassoma purpurum</i> )
	Red ribbon wrasse ( <i>Thalassoma quinquevittatum</i> )
	Sunset wrasse ( <i>Thalassoma lutescens</i> )
	Longface wrasse ( <i>Hologymnosus doliatus</i> )
	Rockmover wrasse ( <i>Novaculichthys taeniourus</i> )
Mullidae (Goatfishes)	Yellow goatfish ( <i>Mulloidichthys</i> spp.)
	Orange goatfish ( <i>Mulloidichthys pfluegeri</i> )
	Yellowfin goatfish ( <i>Mulloidichthys vanicolensis</i> )
	Yellowstripe goatfish ( <i>Mulloidichthys flavolineatus</i> )
	Banded goatfish ( <i>Parupeneus</i> spp.)
	Dash-dot goatfish ( <i>Parupeneus barberinus</i> )
	Doublebar goatfish ( <i>Parupeneus bifasciatus</i> )
	Redspot goatfish ( <i>Parupeneus heptacanthus</i> )
	White-lined goatfish ( <i>Parupeneus ciliatus</i> )
	Yellowsaddle goatfish ( <i>Parupeneus cyclostomas</i> )
	Side-spot goatfish ( <i>Parupeneus pleurostigma</i> )
	Indian goatfish ( <i>Parupeneus indicus</i> )
	Multi-barred goatfish ( <i>Parupeneus multifasciatus</i> )
Mugilidae (Mulletts)	Bantail goatfish ( <i>Upeneus arge</i> )
	Stripped mullet ( <i>Mugil cephalus</i> )
	Engel's mullet ( <i>Moolgarda engelii</i> )
	False mullet ( <i>Neomyxus leuciscus</i> )
	Fringelip mullet ( <i>Crenimugil crenilabis</i> )
Muraenidae (Moray eels)	Yellowmargin moray eel ( <i>Gymnothorax flavimarginatus</i> )
	Giant moray eel ( <i>Gymnothorax javanicus</i> )
	Undulated moray eel ( <i>Gymnothorax undulatus</i> )
Octopodidae	Octopus ( <i>Octopus cyanea</i> ; <i>Octopus ornatus</i> )
Polynemidae	Threadfin ( <i>Polydactylus sexfilis</i> )
Pracanthidae (Bigeye)	Glasseye ( <i>Heteropriacanthus cruentatus</i> )
	Bigeye ( <i>Priacanthus hamrui</i> )
Scaridae (Parrotfishes)	Humphead parrotfish ( <i>Bulbometapon muracatum</i> )
	Parrotfish ( <i>Scarus</i> spp.)
	Pacific longnose parrotfish ( <i>Hipposcarus longiceps</i> )
	Stareye parrotfish ( <i>Catolomus carolinus</i> )
Scombridae	Dogtooth tuna ( <i>Gymnosarda unicolor</i> )
Siganidae (Rabbitfish)	Forktail rabbitfish ( <i>Siganus aregentus</i> )
	Golden rabbitfish ( <i>Siganus guttatus</i> )
	Gold-spot rabbitfish ( <i>Siganus punctatissimus</i> )
	Randall's rabbitfish ( <i>Siganus randalli</i> )
	Scribbled rabbitfish ( <i>Siganus spinus</i> )
	Vermiculate rabbitfish ( <i>Siganus vermiculatus</i> )
Sphyaenidae (Barracuda)	Heller's barracuda ( <i>Sphyaena helleri</i> )
	Great Barracuda ( <i>Sphyaena barracuda</i> )
Turbinidae (turban shells/green snails)	Green snails ( <i>Turbo</i> spp.)
Aquarium Taxa/Species	Acanthuridae
	Yellow tang ( <i>Zebrasoma flavescens</i> )
	Yellow-eyed surgeon fish ( <i>Ctenochaetus strigosus</i> )
	Achilles tang ( <i>Acanthurus achilles</i> )
	Muraenidae
	Dragon eel ( <i>Enchelycore pardalis</i> )
	Zanclidae
	Morrish idol ( <i>Zanclus cornutus</i> )
	Pomacanthidae
	Angelfish ( <i>Centropyge shepardi</i> , <i>Centropyge flavissimus</i> )
	Cirrhitidae
	Flame hawkfish ( <i>Neocirrhites armatus</i> )
	Chaetodontidae
	Butterflyfish ( <i>Chaetodon auriga</i> , <i>Chaetodon lunula</i> , <i>Chaetodon melannotus</i> , <i>Chaetodon ephippium</i> )
	Pomacentridae

Family name	Common name (scientific name)
	Damselfish ( <i>Chromis viridis</i> , <i>Dascyllus aruanus</i> , <i>Dascyllus trimaculatus</i> )
	Sabellidae
	Featherduster worm

[69 FR 8346, Feb. 24, 2004]

TABLE 3 TO PART 665—POTENTIALLY HARVESTED CORAL REEF TAXA

Labridae spp. (wrasses) (Those species not listed in Table 3).	Ephippidae (batfish)
Carcharhinidae spp. Sphyrnidae spp. (Those species not listed in Table 3).	Monodactylidae (monos)
Dasyatidae, Myliobatidae, Mobulidae (rays) ...	Haemulidae (sweetlips)
Serranidae spp. (groupers) (Those species not listed in Table 3 or are not bottomfish management unit species).	Echineididae (remoras)
Carangidae (jacks/trevallies) (Those species not listed in Table 3 or are not bottomfish management unit species).	Malacanthidae (tilefish)
Holocentridae spp. (soldierfish/squirrelfish) (Those species not listed in Table 3).	Acanthoclinidae (spiny basslets)
Mullidae spp. (goatfish) (Those species not listed in Table 3).	Pseudochromidae (dottybacks)
Acanthuridae spp. (surgeonfish/unicornfish) (Those species not listed in Table 3).	Plesiopidae (prettyfins)
Lethrinidae spp. (emperor fish) (Those species not listed in Table 3 or are not bottomfish management unit species).	Tetrarogidae (waspfish)
Chlopsidae, Congridae, Moringuidae, Ophichthidae (eels) Muraenidae (morays eels) (Those species not listed in Table 3).	Caracanthidae (coral crouchers)
Apogonidae (cardinalfish) .....	Grammistidae (soapfish)
Zanclidae spp. (moorish idols) (Those species not listed in Table 3).	<i>Aulostomus chinensis</i> (trumpetfish)
Chaetodontidae spp. (butterflyfish) (Those species not listed in Table 3).	<i>Fistularia commersoni</i> (coronettfish)
Pomacanthidae spp. (angelfish) (Those species not listed in Table 3).	Anomalopidae (flashlightfish)
Pomacentridae spp. (damselfish) (Those species not listed in Table 3).	Clupeidae (herrings)
Scorpaenidae (scorpionfish) .....	Engraulidae (anchovies)
Blenniidae (blennies) .....	Gobiidae (gobies)
Sphyrnaenidae spp. (barracudas) (Those species not listed in Table 3).	Lutjanidae (snappers) (Those species that are not listed in Table 3 or are not bottomfish management unit species)
Pinguipedidae (sandperches) .....	Ballistidae/Monacanthidae spp. (Those species not listed in Table 3)
<i>Gymnosarda unicolor</i> .....	Siganidae spp. (rabbit fish) (Those species not listed in Table 3)
Bothidae/Soleidae/Pleurnectidae (flounder/sole)	Kyphosidae spp. (rudderfish) (Those species not listed in Table 3)
Ostraciidae (trunkfish) .....	Caesionidae (fusiliers)
Tetradontidae/Diodontidae (puffer/porcupinefish).	Cirrhitidae (hawkfish) (Those species not listed in Table 3)
	Antennariidae (frogfishes)
	Syngnathidae (pipefishes/seahorses)

**Fishery Conservation and Management**

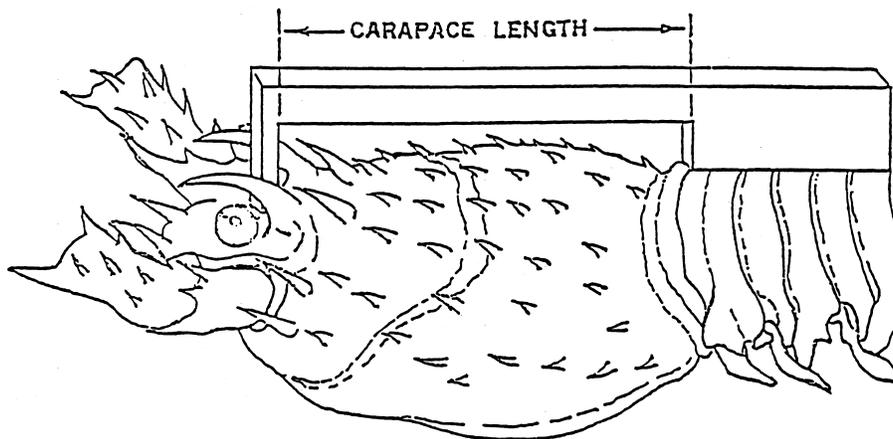
**Pt. 665, Fig. 1**

Stony corals .....	Echinoderms (e.g., sea cucumbers, sea urchins)
Heliopora (blue corals) .....	Mollusca (Those species not listed in Table 3)
Tubipora (organpipe corals) .....	Sea Snails (gastropods) (Those species not listed in Table 3)
Azooxanthellates (ahermatypic corals) .....	<i>Trochus</i> spp.
Fungiidae (mushroom corals) .....	Opisthobranchs (sea slugs)
Small and large polyp corals .....	<i>Pinctada margaritifera</i> (black lipped pearl oyster)
Millepora (firecorals) .....	Tridacnidae (giant clams)
Soft corals and Gorgonians .....	Other Bivalves (other clams)
Actinaria (anemones) .....	Cephalopods
Zoanthinaria (soft zoanthid corals) .....	Crustaceans (Lobsters, Shrimps/mantis shrimps, true crabs and hermit crabs (not listed as crustacean management unit species))
Sponges (Porifera) .....	Stylasteridae (lace corals)
Hydrozoans .....	Solanderidae (hydroid corals)
Bryozoans .....	Annelids (segmented worms) (Those species not listed in Table 3)
Tunicates (sea squirts) .....	Algae (seaweeds)
	Live rock

All other coral reef ecosystem management unit species that are marine plants, invertebrates, and fishes that are not listed in Table 3 or are not bottomfish management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral or seamount groundfish.

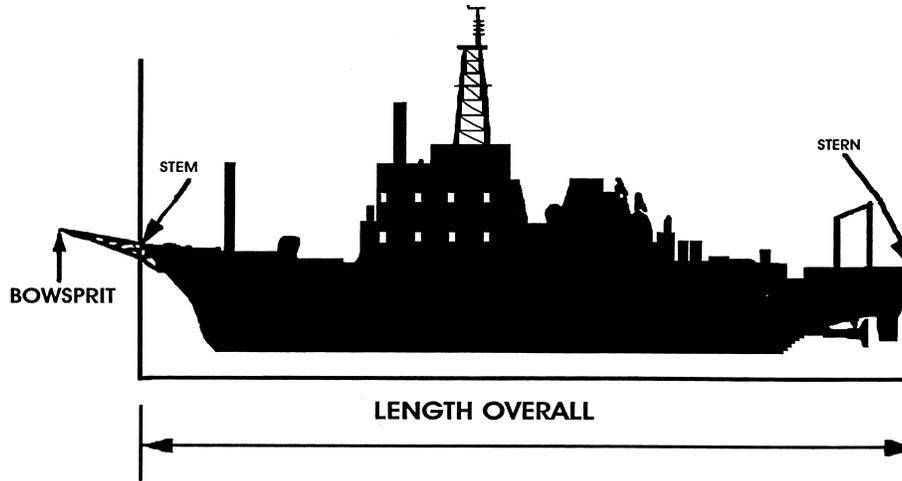
[69 FR 8346, Feb. 24, 2004]

FIGURE 1 TO PART 665—CARAPACE LENGTH OF LOBSTERS



Carapace Length of Lobsters

FIGURE 2 TO PART 665—LENGTH OF FISHING VESSEL



[61 FR 34572, July 2, 1996, as amended at 67 FR 4371, Jan. 30, 2002]

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

**Subpart A—General**

- Sec.
- 679.1 Purpose and scope.
- 679.2 Definitions.
- 679.3 Relation to other laws.
- 679.4 Permits.
- 679.5 Recordkeeping and reporting.
- 679.6 Exempted fisheries.
- 679.7 Prohibitions.
- 679.8 Facilitation of enforcement.
- 679.9 Penalties.

**Subpart B—Management Measures**

- 679.20 General limitations.
- 679.21 Prohibited species bycatch management.
- 679.22 Closures.
- 679.23 Seasons.
- 679.24 Gear limitations.
- 679.25 Inseason adjustments.
- 679.26 Prohibited Species Donation Program.
- 679.27 Improved Retention/Improved Utilization Program.
- 679.28 Equipment and operational requirements.

**Subpart C—Western Alaska Community Development Quota Program**

- 679.30 General CDQ regulations.

- 679.31 CDQ reserves.
- 679.32 Groundfish and halibut CDQ catch monitoring.

**Subpart D—Individual Fishing Quota Management Measures**

- 679.40 Sablefish and halibut QS.
- 679.41 Transfer of quota shares and IFQ.
- 679.42 Limitations on use of QS and IFQ.
- 679.43 Determinations and appeals.
- 679.44 Penalties.
- 679.45 IFQ cost recovery program.

**Subpart E—Groundfish Observer Program**

- 679.50 Groundfish Observer Program.

**Subpart F—American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures**

- 679.60 Authority and related regulations.
- 679.61 Formation and operation of fishery cooperatives.
- 679.62 Inshore sector cooperative allocation program.
- 679.63 Catch weighing requirements for vessels and processors.
- 679.64 Harvesting sideboard limits in other fisheries.
- 679.65 [Reserved]

**Subpart G—Rockfish Program**

- 679.80 Initial allocation of rockfish QS.
- 679.81 Rockfish Program annual harvester and processor privileges.