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**FOR FURTHER INFORMATION CONTACT:**

Mike Ruccio, Fishery Management Specialist, (978) 281-9104, FAX (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 8,206 lb (3,722 kg) of its 2005 commercial quota to Virginia to cover a landing of a North Carolina vessel granted safe harbor in Virginia following storm damage to the vessel's pilothouse. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2005, inclusive of previous adjustments published on March 9, 2005 (70 FR 11584) and April 5, 2005 (70 FR 21162), are: North Carolina, 4,680,519 lb (2,123,083 kg); and Virginia, 4,013,906 lb (1,820,708 kg).

**Classification**

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: May 18, 2005.

**Stephen Meyers,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 05-10350 Filed 5-19-05; 4:01 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 040628196-5130-02; I.D. 061704A]

**RIN 0648-AQ92**

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 11 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Amendment 11), which establish a limited entry system for pelagic longline vessels fishing in waters of the U.S. exclusive economic zone (EEZ) around American Samoa. The action is necessary to effectively manage the pelagics fisheries around American Samoa. This final rule is intended to establish management measures that would stabilize effort in the fishery to avoid a "boom and bust" cycle of fishery development that could disrupt community participation and limit opportunity for substantial participation in the fishery by indigenous islanders.

**DATES:** Effective August 1, 2005, except §§ 660.21(c), 660.22(e),(f), and (g), which are effective December 1, 2005.

**ADDRESSES:** CD or paper copies of Amendment 11, including an Environmental Assessment (EA), regulatory impact review (RIR) and final regulatory flexibility analysis (FRFA) may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. These documents are also available at the following website: <http://www.wpcouncil.org>. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to William L. Robinson, Regional Administrator, Pacific Islands Region (PIR), NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, and David Rostker, OMB, by email at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or facsimile (Fax) 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:**

Alvin Katekaru, NMFS PIR, at 808-973-2937.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This **Federal Register** document is also accessible via the internet at the website of the Office of Federal Register: <http://www.access.gpo.gov/sudocs/aces/aces140.html>.

**Background**

On July 22, 2004, NMFS published a proposed rule (69 FR 43389) that would establish a limited access permit program for the pelagic longline fishery based in American Samoa under Amendment 11. Amendment 11 was approved by the Secretary of Commerce on September 23, 2004. The final rule is intended to: (1) Avoid a "boom and bust" cycle of fishery development that could disrupt community participation in the American Samoa small-scale pelagic fishery; (2) establish a framework to adjust regulations for the American Samoa-based longline fishery; (3) reduce the potential for fishing gear conflict in waters of the EEZ around American Samoa; (4) maintain local catch rates of albacore tuna at economically viable levels; and (5) provide an opportunity for substantial participation by indigenous islanders in the large vessel sector of the fishery. This final rule applies specifically to the permitted owners and operators of vessels that fish for pelagic management species under Hawaii limited access longline permits or western Pacific general longline permits within the EEZ, as well as the high seas, around American Samoa, and generally to permitted owners and operators of vessels fishing for pelagic management species in the western Pacific region (the Northern Mariana Islands; Guam; Hawaii; Midway, Johnston, and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands).

The following is a summary of key measures in this final rule implementing Amendment 11. Initial American Samoa longline limited access permits will be issued to qualifying individuals who owned vessels that were used to legally harvest Pacific pelagic management unit species with longline gear in the EEZ around American Samoa (with those fish landed in American Samoa) prior to March 22, 2002. An individual who had provided written notice to NMFS or the Council of intent to participate in the fishery prior to June 28, 2002, would also qualify for an initial limited access permit. NMFS will publish a notice in the **Federal Register** to solicit

participation in the program and establish a mailing list, as one of the means, to notify prospective applicants of the availability of permits. American Samoa limited access longline permits are established for four categories based on vessel length: (a) Class A—less than or equal to 40 ft (12.2 m); (b) Class B—over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive; (c) Class C—over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive; and (d) Class D—over 70 ft (21.3 m). The rule sets a schedule of 120 days for a permittee to register his or her vessel for use with a American Samoa longline limited access permit. The rule also allows for 26 “upgrade permits” to be made available, following the issuance of initial limited access permits, for the exclusive use of permit holders in the smallest vessel size class (less than or equal to 40 ft (12.2 m)), with priority based on documented historical participation in the fishery. Those receiving “upgrade permits” are not allowed to transfer their new permits for 3 years. All other permits are transferable to individuals who can document (regardless of date) that they worked on a vessel that caught Pacific pelagic management species on longline gear in the EEZ around American Samoa, with those fish landed in American Samoa. This rule also: prohibits any individual from owning more than 10 percent of the maximum permits allowed (in all vessel size classes combined), with any fractional interest in a permit counted as a whole permit; establishes an administrative fee for the issuance, renewal, or transfer of any permit; requires documented landings of at least 1,000 lb (455 kg) of Pacific pelagic management unit species during every 3 consecutive calendar years for vessels in the smaller vessel size classes (Class A and B), and at least 5,000 lb (2,273 kg) every 3 consecutive calendar years for vessels in the two larger vessel size classes (Class C and D) in order to renew permits; requires all vessels permitted under the limited access system that are 50 ft (15.2 m) in length or greater to carry active vessel monitoring systems (VMS), if requested by NMFS; requires vessels greater than 40 ft (12.2 m) in length to carry observers, if requested by NMFS; and requires operators of permitted vessels greater than 40 ft (12.2 m) in length to notify NMFS no less than 72 hours before embarking on a longline fishing trip.

Additional background information on this final rule may be found in the preamble to the proposed rule (69 FR 43389, July 22, 2004) and is not repeated here.

### Comments and Responses

NMFS received two sets of comments on the proposed rule. NMFS responds to these comments as follows:

*Comment 1:* Local fishermen should be allowed to have most of the fish catch (but also that longline gear should be banned immediately), not “profiteers coming with their big money, big boats” from other areas.

*Response:* Two objectives of Amendment 11 relate to continued participation of American Samoan communities and opportunities for sustained future participation by indigenous American Samoans in the domestic longline fishery. Several provisions of the American Samoa limited access permit program help to achieve these objectives, including the eligibility requirements for initial permits (requiring historical participation in the fishery), restrictions on permit transferability, and permit upgrade provisions. The final regulations implementing Amendment 11 therefore ensure that local, indigenous fishermen and their communities are afforded opportunities to participate in the American Samoa pelagic longline fishery. No changes have been made to the rule as a result of this comment.

*Comment 2:* The control date for eligibility for initial limited access permits should have been in 2000, rather than 2002.

*Response:* In recommending control date(s) for initial permit eligibility, the Council attempted to balance the need to place effective limits on fishing effort and to minimize adverse impacts on current fishery participants. Although a control date in 2000 would have resulted in a smaller number of available permits, NMFS finds that the 2002 control dates (March 22 and June 28, 2002) will provide an adequately conservative limit. No changes have been made to the rule as a result of this comment.

*Comment 3:* No vessel upgrade permits should be provided.

*Response:* The purpose of providing permit upgrades is, in part, to help achieve the objectives of ensuring opportunities for substantial future participation by indigenous American Samoans, maintaining sustained community participation, and minimizing adverse impacts on communities. Although the permit upgrades will allow fishing effort of the longline limited access fleet to increase from its initial level, the magnitude of that increase will be restricted by the limits on the number of available upgrade permits (26) and the period

within which they must be used. NMFS finds that the potential growth in the fleet’s fishing effort is not excessive and that it is appropriate given economic, social, and cultural considerations. No changes have been made to the rule as a result of this comment.

*Comment 4:* No individual should own more than two percent of the boats.

*Response:* The rule would limit the number of permits held by any single permit holder to 10 percent of the total. NMFS finds that this limit is appropriate for the purpose of preventing excessive concentration of permit ownership. No changes have been made to the rule as a result of this comment.

*Comment 5:* The fee for a permit should be \$500 initially, and possibly raised later.

*Response:* The fee amount for limited access permits under this rule is in accord with the Magnuson-Stevens Fishery Conservation Management Act (Magnuson-Stevens Act), which does not allow NMFS to collect permit-related fees in excess of the costs for administering the permits program. Permit application fees for fisheries in the western Pacific region are commensurate with the administrative costs of processing permit applications (which are currently estimated to be less than \$100 per year). The fee amount for processing an American Samoa longline limited access permit will be determined in accordance with NOAA’s Financial Handbook, as is the case for fees established for other western Pacific fishing permits. No changes have been made to the rule as a result of this comment.

*Comment 6:* In Amendment 11, “economics should be downgraded in these deliberations and proposals and environmental considerations should be paramount.

*Response:* The Council and NMFS considered both environmental and economic factors in the development of Amendment 11 and its implementing regulations, as required by the Magnuson-Stevens Act, the Regulatory Flexibility Act, Executive Order 12866, and the National Environmental Policy Act. NMFS believes that the final rule is based on a thorough consideration of all relevant factors and that it would achieve both the environmental and economic objectives of Amendment 11. No changes have been made to the rule as a result of this comment.

*Comment 7:* It is time to start assessing heavy fines on those who violate Federal fishery regulations; and fees for violations should start at a minimum of \$5,000.

*Response:* This rule does not establish fine levels. That said, NMFS recognizes the need to ensure compliance with fishery regulations established under the Magnuson-Stevens Act. Procedures for assessing civil penalties for those who violate federal fishery regulations, including those governing the pelagic longline fishery in American Samoa, are found in NOAA's Civil Procedure regulations (15 CFR part 904). Maximum civil penalty amounts are established by statute. The penalty in any particular case is assessed after consulting NOAA's civil administrative penalty schedule. Consideration is given to many factors including, but not limited to, a fisherman's ability to pay the fine, the severity of the violation based on its impact on the resource, and whether or not the fisherman has prior violations. While enforcement priorities exist, and may vary by region, NOAA is committed to a comprehensive program of enforcing all of the statutes it administers. Funding for enforcement of these statutes, and any of the implementing regulations, is by statutory appropriation. No changes have been made to the rule as a result of these comments.

*Comment 8:* Consistent with the Pew Foundation Report, overfishing should be stopped; fishing quotas are set too high and should be cut by 50 percent initially (and 10 percent each year thereafter); marine sanctuaries should be established "where no fish can be touched by human hands."

*Response:* NMFS is cognizant of the recommendations in the Pew Foundation Report in the context of the broad issues raised by the commenter, including overfishing. Overfishing of target management unit species is not occurring in the American Samoa-based pelagic longline fishery. NMFS is confident that Amendment 11 will help prevent overfishing in the fishery or the need for quotas.

Concerning marine sanctuaries, NOAA manages a National Marine Sanctuary in Fagatele Bay in American Samoa to protect and conserve marine resources, including fish. Establishment of marine sanctuaries by NOAA is undertaken pursuant to the National Marine Sanctuaries Act, not the Magnuson-Stevens Act under which these fishing regulations are implemented. No changes have been made to the rule as a result of these comments.

#### Changes to the Proposed Rule

In § 660.13, paragraphs (c)(1),(2) and (d) are revised to clarify certain requirements pertaining to permit application and change in application

information, respectively. Paragraph (c)(1) is revised to clearly indicate that the Pacific Islands Regional Office is the source of Western Pacific permit application forms and the receiving office for permit applications. Paragraph (c)(2) is revised to clearly indicate that a "deficiency" in permit application, filed with NMFS, means an application that is incomplete, including an application that is improperly completed, resulting in NMFS notifying the permit applicant of the deficiency. Paragraph (d) specifies when all western Pacific fishing permit applicants and permit holders, must notify NMFS if there are any changes to the information in their permit application or vessel documentation previously provided to NMFS, and removes the previous deadline for American Samoa longline limited access permit applicants to notify NMFS within 30 days if there is a complete change in ownership. The 30 day deadline applies to changes of information after permits have been issued, not during the initial application process.

In § 660.21, paragraph (n)(1), clarification is provided on the criteria to be used in reviewing permit appeals concerning longline limited access permits, i.e., under subpart C of 50 CFR 660. The new language also clarifies that the Regional Administrator "will" review relevant portions of the Pelagics FMP (to the extent such review would elucidate the criteria established for permit qualifications and renewals) in rendering a decision.

In § 660.23, paragraph (c), the last sentence was revised to be consistent with the statutory and regulatory citations from the end of § 660.13(d).

In § 660.36, paragraph (b)(1), governing documented participation in the American Samoa longline limited access fishery, flexibility is provided in the kinds of documentation that may be accepted by NMFS in determining qualification for an American Samoa longline limited access permit. In paragraph (b)(1)(ii), a provision is inserted so that a permit applicant may request NMFS to obtain copies of official government records (e.g., creel survey record or logbook) from its files or from the appropriate agency of the Government of American Samoa demonstrating evidence of the applicant's work on a fishing trip. NMFS will undertake the requested action if the permit applicant does not possess copies of the government records. In paragraph (f), required documentation of vessel ownership and/or participation in the fishery, as part of a complete permit application, is clarified. Paragraphs (f)(3) and (g)(3)

establish that the Assistant Regional Administrator for Sustainable Fisheries, rather than the Regional Administrator, shall decide the eligibility for initial and additional permit issuance inasmuch as the Regional Administrator serves as the appeals officer involving disputes and challenges determination of eligibility for issuance of American Samoa longline limited access permits. Paragraph (j)(2) is removed because the requirement for annual protected species workshop certification by vessel owners and operators is included in a separate regulatory amendment that would revise 50 CFR 660.34 (Protected species workshops) proposed by the Council on additional sea turtle mitigation measures under the Pelagics FMP for western Pacific pelagic fisheries, which include the American Samoa-based pelagic longline limited access fishery.

#### Classification

The Administrator, Pacific Islands Region, NMFS, determined that Amendment 11 is necessary for the conservation and management of the pelagic fisheries of the western Pacific region and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The potential economic impacts of this final rule on small entities were identified in an Initial Regulatory Flexibility Analysis (IRFA) and summarized in a **Federal Register** notice published July 22, 2004 (69 FR 43789). A FRFA was subsequently prepared. A description of the need for the rule and its objectives is contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. No public comment was made specifically on the IRFA, but two sets of comments about the economic effects of the rule were received. Those comments, NMFS' responses to those comments, and a statement of the changes made as a result of the comments are presented above. A summary of the remaining parts of the FRFA follows.

Entities to which the final rule will apply include all prospective participants in the pelagic longline fishery in the EEZ around American Samoa, which includes past, present, and additional prospective future participants. Based on fishing information and/or vessel ownership records available from the Government of American Samoa, NMFS anticipates that 138 entities that owned active longline vessels prior to the control date

of March 21, 2002, will be eligible for limited access permits. Of those 138 entities, NMFS believes that approximately 75 will actually apply for and receive initial permits. Of the 138 vessels associated with these entities prior to March 21, 2002, it is believed that 93 vessels were less than or equal to 40 ft (12.2 m) in length, 9 were greater than 40 ft (12.2 m) ranging up to 50 ft (15.2 m) in length inclusive, 15 were greater than 50 ft (15.2 m) ranging up to 70 ft (21.3 m) in length inclusive, and 21 were greater than 70 ft (21.3 m) in length. The current average capital investment in vessels less than 40 ft (12.2 m) is estimated to be between \$25,000 and \$125,000, with annual landings of approximately 50,000 lbs (22,680 kg) and annual ex-vessel revenues estimated to average \$65,000. These are typically catamaran style vessels that average 50–100 one to two day fishing trips annually. These vessels are permanently based in American Samoa and may have been used to pelagic handline or troll in the past. Longline vessels greater than 40 ft (12.2 m) are typically monohull vessels with a current average capital investment of up to \$400,000. These vessels take 17 to 28 fishing trips annually, with trips extending from 4 to 25 days. Annual landings for these vessels range from 200,000 lb to 600,000 lb (90,909.1 kg - 272,727.3 kg) per vessel, with an ex-vessel revenue of \$220,000 to \$660,000. These vessels are currently based in American Samoa, and have also been used in other Pacific pelagic longline or jig fisheries. Based on their ex-vessel revenues, all of these entities are considered to be small businesses with annual revenues of less than \$3.5 million each.

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

Under the final rule, the prospective fishery participants will be required to submit applications to NMFS Pacific Islands Regional Office for permits to participate in the American Samoa-based limited access longline fishery. Documentation of vessel ownership and/or participation in the fishery will be required with permit applications for post-initial permits (i.e., permits applied for after the initial issuance of permits upon establishment of the limited access permit program), upgrade permits (i.e., the limited number of

transfers to larger vessel size classes that will be available to permit holders starting in the smallest size class), and permit transfers. As such, this final rule contains several collection-of-information requirements subject to Paperwork Reduction Act (PRA). These requirements have been approved by OMB. The approved collection-of-information burden to fishermen is estimated at 60 hours annually or a total of 181 hours: 112 hours for initial permits, 20 hours for appeals, 49 hours for permit upgrades and transfers for a 3-year period during which longline limited access permits are valid (until 2007 or 2008). Clearance for collection-of-information concerning permit renewals will be addressed at a later date, prior to expiration of the current collection-of-information (OMB No. 0648-0490) on December 31, 2006.

Besides the collection-of-information requirement associated with the limited access permit program, this final rule requires operators of large (greater than 40 ft (12.2 m) in length) fishing vessels registered with American Samoa longline limited access permits to notify NMFS at least 72 hours prior to leaving port on a longline fishing trip targeting Pacific pelagic management unit species in the EEZ around American Samoa. Notification is necessary for NMFS to determine whether or not observers should be placed on these large vessels. It is estimated that the time required by a vessel operator to notify NMFS prior to each trip is 3 minutes per telephone call. The collection-of-information burden to fishermen is estimated at 68 hours annually, an addition to the currently approved collection under OMB No. 0648-0214.

This final rule requires vessels greater than 50 ft (15.2 m) in length and registered with American Samoa longline limited access permits to carry vessel monitoring system (VMS) units, if directed to do so by NMFS. While the vessel is at sea, NMFS will receive from the VMS unit information on the position of the vessel. NMFS uses the reports to monitor vessel location and activities while enforcing the established large-vessel pelagic fishing area closure around American Samoa. NMFS intends to pay for the installation and maintenance of the VMS units. It is estimated that the annual burden to fishermen of this new collection of information is 167 hours. This includes the time to observe the installation and maintenance of the VMS units. Since the VMS units transmit reports automatically, there is no requirement for the fishermen themselves to report to NMFS on the location of their vessels

while at sea. This collection is approved under OMB No. 0648-0519.

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

NMFS considered a range of alternatives to this final rule, some of which would have smaller economic impacts on small entities than the rule. Ten alternatives, including the preferred alternative, were considered. The alternatives included various combinations of measures that addressed: (1) how longline fishing effort in the EEZ around American Samoa would be limited (including no-action, establishing a limited access program, and establishing a per-trip landing limit of 5,000 lb (2,688 kg)); (2) whether operators of longline vessels in the EEZ around American Samoa would be required to land all captured pelagic management unit species (PMUS) in order to minimize bycatch; (3) whether longline vessels greater than 50 ft (15.2 m) in length would be required to carry and operate a transmitter as part of a vessel monitoring system (VMS); and (4) whether longline vessels greater than 40 ft (12.2 m) in length would be required to carry a vessel observer if directed by NMFS.

For those alternatives that would establish a limited access program, the combinations of measures further addressed: (a) What the limit on permits would be (ranging from 106 to 215 total permits, as well as one alternative in which the initial number of available permits would be equal to the number of individuals with historical experience in the fishery, but, after allowing the fleet size to decrease through attrition, the number of available permits would ultimately be limited to the number of permits predicted to result in an annual fishing effort level of no more than 7.15 million hooks in the nearshore area (within 50 nautical miles (nm) of shore) and 14.3 million hooks in the offshore area (beyond 50 nm from shore); (b) how the limited number of permits would be allocated among vessel size classes (with various allocations among four or five vessel size classes, with zero permits available for vessels greater than 100 ft (30.5 m) in length in all but two alternatives); (c) how the available permits would be initially allocated (including allowing initial entry only to individuals that held a longline permit and landed PMUS in American Samoa prior to March 21, 2002, allowing initial

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

NMFS' reasons for rejecting the significant alternatives are as follows.

The alternative with a per-trip landing limit of 5,000 lb (2,688 kg) was rejected because it would likely result in poorer economic performance than a limited access program and it would encourage high-grading and bycatch. The alternatives that would require that all captured PMUS be landed were rejected because they would be economically inefficient. The alternatives that would not have required that longline vessels greater than 50 ft (15.2 m) in length carry and operate VMS transmitters or not require that longline vessels greater than 40 ft (12.2 m) in length carry a vessel observer if directed by NMFS were rejected because they would not ensure an adequately high level of compliance with certain fishery regulations and not ensure that adequate information about fishing activities is gathered. The alternatives with larger permit limits than the preferred alternative (including the no-action alternative) were rejected because they would be unlikely to sufficiently reduce the potential for gear conflict and catch competition. The alternatives with smaller permit limits than the preferred alternative were rejected because they were determined to be unfair to some prospective participants and socially unacceptable. The alternatives with fewer permits allocated to the smallest vessel size class than the preferred alternative, as well as those without provisions for permit upgrades from the smallest to the larger vessel size classes, those with a one-year rather than three-year use-it-or-lose-it requirement, and those that would not have allowed permit transfers, were rejected because they would be unlikely to maintain sufficiently high levels of participation by American Samoa residents and individuals who have traditionally operated smaller vessels.

Copies of the FRFA are available from the Council (see **ADDRESSES**).

To the extent practicable, it has been determined that there are no Federal rules that may duplicate, overlap, or conflict with this rule.

A formal section 7 consultation under the Endangered Species Act was undertaken for Amendment 11. In a biological opinion issued by NMFS on February 23, 2004, it was determined that fishing activities conducted under Amendment 11 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

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

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

Dated: May 19, 2005.

**Rebecca Lent,**

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

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

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

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

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

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

#### **§ 660.12 Definitions.**

\* \* \* \* \*

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

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

\* \* \* \* \*

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

vertical distance between the top of a vessel's railing and the sea surface.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

**§ 660.13 Permits and fees.**

\* \* \* \* \*

(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 J 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 submitted under paragraph (c) of this section. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. § 1858(g) or 15 CFR part 904, subpart D.

(e) *Issuance.* After receiving a complete application, the Regional Administrator will issue a permit to an applicant who is eligible under §§ 660.21, 660.36, 660.41, 660.61, 660.601, or 660.8, or 660.602 as appropriate.

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

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

■ 4. Section 660.21 is revised to read as follows:

**§ 660.21 Permits.**

(a) A vessel of the United States must be registered for use with a valid permit under the High Seas Fishing

Compliance Act if that vessel is used to fish on the high seas, as required under § 300.15 of this title.

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

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

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

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

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

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

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

(d) A vessel of the United States must be registered for use under a valid Western Pacific 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 § 660.13.

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

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

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

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

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

(2) [Reserved]

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

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

(n) *Permit appeals.* Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal 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.

■ 5. Section 660.22 is revised to read as follows:

#### § 660.22 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 § 660.3, provided that the person is required to do so by applicable state law or regulation.

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

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

(d) Use a vessel shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to land or transship Pacific pelagic management unit species that were harvested with longline gear, in violation of § 660.21(b)(2).

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

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

(g) Use a vessel within the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to transship Pacific pelagic management unit species that were

caught with longline gear, in violation of § 660.21(c)(3).

(h) Use a vessel in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific 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 § 660.21(d)(1).

(i) Use a vessel shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific 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 § 660.21(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 § 660.21(e).

(k) Use a vessel in the EEZ around the PRIA employing handline or trolling methods to fish for Pacific pelagic management unit species without a valid PRIA pelagic troll and handline fishing permit registered for use for that vessel, in violation of § 660.21(f).

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

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

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

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

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

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

(r) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit, in violation of § 660.25(d)(1).

(s) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit, in violation of § 660.25(d)(1).

(t) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer, in violation of § 660.28(f)(4).

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

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

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

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

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

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

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

(bb) Enter the EEZ around American Samoa with longline gear that is not

stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid American Samoa longline limited access permit registered for use with that vessel.

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

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

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

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

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

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

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

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

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

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

(mm) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the

longline fishery has been closed pursuant to § 660.33(b)(2)(I), in violation of § 660.33(I).

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

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

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

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

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

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

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

(uu) Fail to begin the deployment of longline gear at least 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 § 660.35(a)(1).

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

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

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

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

■ 6. Section 660.23 is revised to read as follows:

**§ 660.23 Notifications.**

(a) The permit holder for any vessel registered for use under a Hawaii longline limited access permit or for any vessel greater than 40 ft (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 § 660.12, must notify the NMFS Special-Agent-In-Charge immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time

(GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

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

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

**§ 660.25 Vessel monitoring systems.**

\* \* \* \* \*

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

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

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

■ 8. Section 660.36 is added to read as follows:

**§ 660.36 American Samoa longline limited entry program.**

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

number of permits will be capped at the number of initial permits actually issued under paragraph (f)(1) of this section.

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

(1) *Documented participation* means participation proved by, 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.

(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 §§ 660.13(c)(1), (d) and (f)(2). A complete application must include documented participation in the fishery in accordance with § 660.36(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 § 660.21(n) of this subpart.

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

if any Class A, B, C, or D permit becomes available, the Regional Administrator shall re-issue that permit according to the process set forth in paragraph (g) of this section.

(g) *Additional permit issuance.* (1) If the number of permits issued in Class A, B, C, or D, falls below the maximum number of permits, the Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of any available permit(s) in that class. Any application for issuance of an additional permit must be submitted to PIRO no later than 120 days after the date of publication of the notice on the availability of additional permits in the **Federal Register**. A complete application must include documented participation in the fishery in accordance with § 660.36(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 §§ 660.13(c)(1), (d), and (f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the 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 § 660.21(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, and D-1 permit, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional

Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

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

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

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

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

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

(ii) Any person with documented participation in the pelagic longline fishery in the EEZ around American Samoa.

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

(i) A family member of the permit holder,

(ii) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(I)(2)

of the Magnuson-Stevens Act, 16 U.S.C. 1855(I)(2), and its implementing regulations, or

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

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

(j) *Permit renewal and registration of vessels—(1) Use requirements.* An American Samoa longline limited access

permit will not be renewed following 3 consecutive calendar years (beginning with the year after the permit was issued in the name of the current permit holder) in which the vessel(s) to which it is registered landed less than:

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

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

(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.

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

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

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