

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Parts 660, 661, 663, 680, 681, 683, and 685****[Docket No. 960614176-6176-01; I.D. 050796A]****RIN 0648-A118****Fisheries off West Coast States and in the Western Pacific****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Final rule.

**SUMMARY:** NMFS is consolidating six CFR parts into one new CFR part. The new part contains regulations implementing management measures for fisheries operating in the exclusive economic zone (EEZ) off West Coast and Western Pacific states. The domestic fisheries for groundfish and ocean salmon off the West Coast and for precious corals, crustaceans, bottomfish and seamount groundfish, and Pelagics of the Western Pacific will be managed under this new part. This final rule does not make substantive changes to the existing regulations; rather, it reorganizes management measures into a more logical and cohesive order, removes duplicative and outdated provisions, and makes editorial changes for readability, clarity, and to achieve uniformity in regulatory language. This final rule also amends references to Paperwork Reduction Act (PRA) information-collection requirements to reflect the consolidation. The purpose of this final rule is to make the regulations more concise, better organized, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

**EFFECTIVE DATE:** These regulations are effective on July 1, 1996, with the exception of 50 CFR 660.404 and 660.408, which will become effective when OMB has approved collection-of-information requirements for those sections and that approval has been published in the Federal Register, and 50 CFR 600.53 which will become effective August 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Bill Robinson, NMFS, 206-526-6140; Rod McInnis, NMFS, 310-980-4030; or Alvin Katekaru, NMFS, 808-973-2985.

**SUPPLEMENTARY INFORMATION:****Background**

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to those regulations implementing the Fishery Management Plans (FMPs) for fisheries off West Coast and Western Pacific states.

Domestic groundfish fisheries in the EEZ off the West Coast are managed by NMFS under the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery (Pacific Coast Groundfish Fishery Management Plan), which is implemented by regulations at 50 CFR part 663. The ocean salmon fisheries are managed under the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California, which is implemented by regulations at 50 CFR part 661. The Western Pacific precious corals fisheries are managed under regulations at 50 CFR part 680, which implement the Fishery Management Plan for Precious Coral Fisheries of the Western Pacific Region. The lobster fishery of the Northwestern Hawaiian Islands (NWHI) is managed under the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region, which is implemented by regulations at 50 CFR part 681. The NWHI fisheries for bottomfish and seamount groundfish are managed by NMFS through regulations at 50 CFR part 683, which implement the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. The fisheries for Pacific pelagic species are managed under regulations at 50 CFR part 685, which implement the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. General regulations that also pertain to these fisheries appear in 50 CFR part 600. The Groundfish and Salmon FMPs were prepared by the Pacific Fishery Management Council, and the Precious Corals, Crustaceans, Bottomfish and Seamount Groundfish, and Pelagics FMPs were prepared by the Western Pacific Fishery Management Council, under the authority of the Magnuson

Fishery Conservation and Management Act. Consolidation of Regulations Related to the Domestic Fisheries Operating in the EEZ Off West Coast and Western Pacific States Into One CFR Part (50 CFR part 660)

Currently, regulations implementing the six FMPs described above are contained in six separate parts of title 50 of the CFR, in addition to general provisions for foreign fisheries contained in part 600. NMFS, through this rulemaking, removes the six parts (50 CFR parts 661, 663, 680, 681, 683, and 685) and consolidates the regulations contained therein into one new part (50 CFR part 660). This consolidated regulation provides the public with a single reference source for the Federal fisheries regulations specific to the fisheries operating in the EEZ off the West Coast (California, Oregon, and Washington) or in the Western Pacific (Hawaii, American Samoa, Guam, the Northern Mariana Islands, and U.S. island possessions in the Pacific). The restructuring of the six parts into a single part results in one set of regulations that is more concise, clearer, and easier to use than the six separate parts. Many provisions in part 600 also apply to the fisheries operating in the EEZ off West Coast and Western Pacific States.

#### **Reorganization of Management Measures Within the Consolidated Regulations and Elimination of Obsolete or Duplicative Provisions**

In new part 660, NMFS has reorganized the consolidated management measures in a more logical and cohesive order. Because portions of the existing regulations contain identical or nearly identical provisions, similar measures have been combined and restructured. For example, certain definitions, prohibitions, and requirements that were common to the current regulations for all the fisheries, but located in different parts, were placed in a general subpart so they would only appear once. For provisions common to all Western Pacific fisheries, a separate subpart is established. Paragraph headings have been added where appropriate for ease in identifying measures, and regulatory language has been revised to improve clarity and consistency.

As a result of the consolidation effort, NMFS also identified duplicative and obsolete provisions and removed those measures from the regulations. For example, obsolete provisions dealing with initial issuance of permits under limited entry programs for Western Pacific bottomfish, crustacean, and longline fisheries and for West Coast

groundfish fisheries were removed. In addition, changes to part 661 (salmon) include correcting the scientific name for steelhead (rainbow trout) to *Oncorhynchus mykiss*, updating escapement goals for consistency with revised management procedures of the Pacific Fishery Management Council, and removing the appendix by incorporation of relevant portions into the numbered sections and deletion of any repetitive or unnecessary information.

Changes to part 663 (Pacific Coast groundfish) include removing the appendix of standards and procedures and, instead, referencing appropriate sections in the Pacific Coast Groundfish Fishery Management Plan, removing obsolete requirements for applications for limited entry permits, consolidating definitions in one section that previously were scattered throughout part 663, removing those definitions and regulations that either appear elsewhere in part 660 or are no longer relevant after the appendix was removed, and making technical and editorial clarifications.

A limited entry program was implemented in the Pacific Coast groundfish fishery in 1994. The window of time for initial permit issuance is over, so the standards and procedures for initial permit issuance have been removed from the regulations because they are no longer necessary. There are still some appeals from permits denials pending before the agency and Federal courts. The regulatory provisions that were in effect at the time of permit denial will still be used in these proceedings, even though they are being removed from codification. There are two extremely limited circumstances in which fishermen may obtain new initial permits, but it is highly unlikely that anyone will qualify for a permit under these provisions. Therefore, the details governing these permits are removed from codification. The standards and procedures covering issuance of these permits, and the privileges accompanying these permits, are described in the FMP, and the relevant sections are cited in these regulations. The provisions governing administration and transfer of existing permits remain in the codified regulations.

No substantive changes were made to the regulations by this reorganization or by the removal of duplicative and obsolete provisions.

Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and

display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule codifies many recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the consolidation.

This rule also makes a technical correction to the regulations establishing a longline fishing prohibited area around Guam. The final rule technical amendment published September 13, 1994 (59 FR 46933) contained an error, and the correct coordinates have been specified in § 660.26(d).

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

#### Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because this rule makes only nonsubstantive changes to existing regulations originally issued after prior notice and an opportunity for public comment, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 533(b)(B), for good cause finds that providing such procedures for this rulemaking is unnecessary. Because this rule is not substantive, it is not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

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

OMB approval for the West Coast Salmon Fisheries PRA collection-of-information requirements has expired. NMFS is in the process of obtaining OMB approval for these requirements. The collection of information requirements of 50 CFR 660.404 and 660.408 are suspended until such time as OMB approves the collection and notification of the approval is published in the Federal Register.

The following collection-of-information requirements have already been approved by OMB for U.S. fishing activities:

a. *Approved under 0648-0204*—(1) Southwest Region Federal Fishing Permits, estimated at 0.55 hours per permit action; (2) experimental fishing permits, estimated at 2 hours per application (§§ 660.13, 660.17, and 660.21(k)).

b. *Approved under 0648-0214*—Southwest Logbook Family of Forms: (1) Catch-and-effort logbooks, estimated at 5 minutes per response; (2) pre-trip notifications, estimated at 5 minutes per notice; (3) post-landing notices, estimated at 5 minutes per response; (4) observer placement meetings, estimated at 1 hour per response; (5) protected species interaction reports, estimated at 3 minutes per response; (6) pre-landing notices, estimated at 5 minutes per response; (7) experimental fishing reports, estimated at 4 hours per report; (8) report on gear left at sea, estimated at 5 minutes per response; (9) sales and transshipment reports, estimated at 5 minutes per response; (10) precious corals sales report, estimated at 15 minutes per response; (11) pelagics transshipment logbooks, estimated at 5 minutes per response; (12) claims for reimbursement for lost fishing time, estimated at 4 hours per response; and (13) request for pelagics area closure exemption, estimated at 1 hour per response (§§ 660.14, 660.23, 660.24, 660.28, 660.43, and 660.48).

c. *Approved under 0648-0203*—Northwest Federal Fisheries Permits: (1) Experimental fishing permits, estimated at 32 minutes per response; (2) limited entry permits, estimated at 20 minutes per response; and (3) at-sea processing permits, estimated at 20 minutes per response (§ 660.333).

d. *Approved under 0648-0243*—Survey of intent and capacity to harvest and process fish and shellfish, estimated at 5 minutes per response (§ 660.323).

e. *Approved under 0648-0271*—Northwest Region Logbook Family of Forms: (1) Weekly production report, estimated at 30 minutes per response; (2) transfer logs, estimated at 15 minutes per response; (3) cumulative production logs, estimated at 13-26 minutes per response, depending on the type of fishing operation; and (4) start/stop reports, estimated at 5 minutes per response (§ 660.305).

f. *Approved under 0648-0305*—Gear identification requirements, estimated at 30 minutes per response (§§ 660.24, 660.48, and 660.322).

g. *Approved under 0648-0306*—Vessel identification requirements, estimated at 35 minutes per response (§§ 660.16 and 660.305).

h. *Approved under 0648-0307*—Arrangements for placing and adjusting vessel monitoring system units,

estimated at 1 hour per response (§ 660.25).

Because this rule makes only nonsubstantive changes to existing regulations, no useful purpose would be served by providing advance notice and opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), for good cause finds that providing notice and opportunity for public comment is unnecessary. Because this rule is not substantive, it is not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

##### 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

##### 50 CFR Part 680

Fisheries, Fishing, Reporting and recordkeeping requirements.

##### 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

##### 50 CFR Part 681

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

##### 50 CFR Part 685

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

Dated: June 20, 1996.

Gary Matlock,  
Program Management Officer, National  
Marine Fisheries Service.

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

#### 15 CFR CHAPTER IX

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

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

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

2. In § 902.1, paragraph (b) the table, in the entries for 50 CFR in the left column, in numerical order, the

following entries and corresponding OMB Numbers are removed: “680.4”, “680.5”, “680.6”, “680.10”, “681.4”, “681.5”, “681.6”, “681.10”, “681.24”, “681.25”, “681.30”, “683.4”, “683.9”, “683.21”, “683.25”, “683.27”, “683.29”, “685.4”, “685.9”, “685.10”, “685.11”, “685.12”, “685.13”, “685.14”, “685.15”, “685.16”, and “685.24”. The following new entries are added to the table:

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

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
(b) * * *	
50 CFR	
§ 660.13	—0204
§ 660.14	—0214
§ 660.16	—0306
§ 660.17	—0204
§ 660.21(k)	—0204
§ 660.23	—0214
§ 660.24	—0305
§ 660.25	—0307
§ 660.27	—0214
§ 660.28	—0214
§ 660.43	—0214
§ 660.48	<sup>1</sup> —0214
§ 660.303	—0271
§ 660.305	—0306
§ 660.322	—0305
§ 660.323	—0243
§ 660.333	—0203

<sup>1</sup> And —0305.

#### 50 CFR CHAPTER VI

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

3. Part 660 is added to read as follows:

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

#### Subpart A—General

Sec.

- 660.1 Purpose and scope.
- 660.2 Relation to other laws.
- 660.3 Reporting and recordkeeping.

#### Subpart B—Western Pacific Fisheries—General

- 660.11 Purpose and scope.
- 660.12 Definitions.
- 660.13 Permits and fees.
- 660.14 Reporting and recordkeeping.
- 660.15 Prohibitions.
- 660.16 Vessel identification.
- 660.17 Experimental fishing.

#### Subpart C—Western Pacific Pelagic Fisheries

- 660.21 Permits.
- 660.22 Prohibitions.
- 660.23 Notifications.
- 660.24 Gear identification.
- 660.25 Vessel monitoring system.
- 660.26 Longline fishing prohibited area management.
- 660.27 Exemptions for longline fishing prohibited areas; procedures.
- 660.28 Conditions for at-sea observer coverage.
- 660.29 Port privileges and transiting for unpermitted U.S. longline vessels.
- 660.30 Prohibition of drift gillnetting.
- 660.31 Framework adjustments to management measures.

#### Subpart D—Western Pacific Crustacean Fisheries

- 660.41 Permits.
- 660.42 Prohibitions.
- 660.43 Notifications.
- 660.44 Lobster size and condition restrictions.
- 660.45 Closed seasons.
- 660.46 Closed areas.
- 660.47 Gear identification.
- 660.48 Gear restrictions.
- 660.49 At-sea observer coverage.
- 660.50 Harvest limitation program.
- 660.51 Monk seal protective measures.
- 660.52 Monk seal emergency protective measures.
- 660.53 Framework procedures.
- 660.54 Five-year review.

#### Subpart E—Bottomfish And Seamount Groundfish Fisheries

- 660.61 Permits.
- 660.62 Prohibitions.
- 660.63 Notification.
- 660.64 Gear restrictions.
- 660.65 At-sea observer coverage.
- 660.66 Protected species conservation.
- 660.67 Framework for regulatory adjustments.
- 660.68 Fishing moratorium on Hancock Seamount.
- 660.69 Management Subareas.

#### Subpart F—Precious Corals Fisheries

- 660.81 Permits.
- 660.82 Prohibitions.
- 660.83 Seasons.
- 660.84 Quotas.
- 660.85 Closures.
- 660.86 Size restrictions.
- 660.87 Area restrictions.
- 660.88 Gear restrictions.

#### Subpart G—West Coast Groundfish

- 660.301 Purpose and scope.
- 660.302 Definitions.
- 660.303 Reporting and recordkeeping.
- 660.304 Management areas.
- 660.305 Vessel identification.
- 660.306 Prohibitions.
- 660.321 Specifications and management measures.
- 660.322 Gear restrictions.
- 660.323 Catch restrictions.
- 660.324 Pacific Coast treaty Indian fisheries.
- 660.331 Limited entry and open access fisheries—general.

- 660.332 Allocations.  
 660.333 Limited entry fishery.  
 660.334 Limited entry permits—"A" endorsement.  
 660.335 Limited entry permits—"Provisional A" endorsement.  
 660.336 Limited entry permits—"B" endorsement.  
 660.337 Limited entry permits—"designated species B" endorsement.  
 660.338 Limited entry permits—new permits.  
 660.339 Limited entry permit fees.  
 660.340 Limited entry permit appeals.  
 660.341 Limited entry permit sanctions.

#### Subpart H—West Coast Salmon Fisheries

- 660.401 Purpose and scope.  
 660.402 Definitions.  
 660.403 Relation to other laws.  
 660.404 Recordkeeping and reporting.  
 660.405 Prohibitions.  
 660.406 Exempted fishing.  
 660.407 Treaty Indian fishing.  
 660.408 Annual actions.  
 660.409 Inseason actions.  
 660.410 Escapement goals.  
 660.411 Notification and publication procedures.  
 Tables—Part 660  
 Table 1 to Part 660—Quotas for Precious Corals Permit Areas  
 Table 2 to Part 660—Vessel Capacity Ratings for West Coast Groundfish Limited Entry Permits  
 Figures—Part 660  
 Figure 1 to Part 660—Carapace Length of Lobsters

- Figure 2 to Part 660—Length of a Longline Vessel  
 Figure 3 to Part 660—Dressed, Head-off Length of Salmon  
 Authority: 16 U.S.C. 1801 *et. seq.*

#### Subpart A—General

##### § 660.1 Purpose and scope.

(a) The regulations in this part govern fishing for Western Pacific and West Coast 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 and West Coast 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 600 of this chapter.

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

##### § 660.3 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

##### § 660.11 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, and F of this part.

##### § 660.12 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in subparts B through F of this part have the following meanings:

*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 § 660.69.

*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' lusama (S); yellowtail kalekale .....	<i>Pristipomoides auricilla.</i>
Pink snapper .....	Opakapaka (H); palu-'Tlena'lana (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); tafaui (S) .....	<i>Caranx lugubris.</i>
Thick lipped trevally .....	Pig ulua (H); butaguchi (H) .....	<i>Pseudocaranx dentex.</i>
Amberjack .....	Kahala (H) .....	<i>Seriola dumerili.</i>
<b>Groupers:</b>		
Blacktip grouper .....	Fausi (S); gadau (G) .....	<i>Epinephelus fasciatus.</i>
Sea bass .....	Hapu' 1upu'u (H) .....	<i>Epinephelus quernus.</i>
Lunartail grouper .....	Papa (S) .....	<i>Variola louti.</i>
<b>Emperor fishes:</b>		
Ambon emperor .....	Filao-gutumumu (S) .....	<i>Lethrinus amboinensis.</i>
Redgill emperor .....	Filao-pa'lo'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).

*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.

*Council* means the Western Pacific Fishery Management Council.

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

*Crustaceans management area* means the combined portions of the EEZ encompassed by Crustaceans Permit Areas 1, 2, and 3.

*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 of the Territory of Guam and the EEZ of the Territory of American Samoa.

*Crustaceans receiving vessel* means a vessel of the United States to which lobster taken in Permit Area 1 are transferred from another vessel.

*Dead coral* means any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

*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 management 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).

*Fisheries Management Division (FMD)* means the Chief, Fisheries Management Division, Southwest Regional Office, NMFS, or a designee. See Table 1 to § 600.502 for the address of the Regional Office.

*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 seabed.

(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.

*Harvest guideline* means a specified numerical harvest objective.

*Hawaii longline limited access permit* means the permit required by § 660.21 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.

*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 Director of his or her interest in the procedures and decisions described in §§ 660.51 and 660.52, 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.

*Length overall (LOA)* or *length* of a vessel, as used in § 660.21(i), means the horizontal distance, rounded to the nearest foot (with 0.5 ft and above 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 of 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 is free of holes from borers, and has no discoloration or encrustation on the skeleton at the time of removal from the seabed.

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

*Longline fishing prohibited area* means the portions of the EEZ in which

longline fishing is prohibited as specified in § 660.26.

*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.

*Longline general permit* means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species in the fishery management area, excluding the EEZ around Hawaii, or to land or transship longline-caught fish shoreward of the outer boundary of the fishery management area, excluding the waters shoreward of the EEZ around Hawaii.

*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.

*Offloading* means removing management unit species from a vessel.

*Owner*, as used in subparts C and D of this part, 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 or territory or the USCG for an undocumented vessel. As used in subpart E and F of this part, owner has the meaning in § 600.10 of this chapter.

*Pacific Area Office* means the Pacific Area Office, Southwest Region, NMFS, located in Honolulu, HI. The address and phone number may be obtained from the Regional Director whose address is in Table 1 to § 600.502.

*Pacific pelagic management unit species* means the following fish:

Common name	Scientific name
Mahimahi (dolphin fish).	<i>Coryphaena</i> spp.
Marlin and spearfish	<i>Makaira</i> spp.
Oceanic sharks .....	<i>Tetrapturus</i> spp.
	Family Alopiidae.
	Family
	Carcharhinidae.
	Family Lamnidae.
	Family Sphyrnidae.
Sailfish .....	<i>Istiophorus</i>
	<i>platypterus</i> .
Swordfish .....	<i>Xiphias gladius</i> .
Tuna and related species.	<i>Allothenus</i> spp.,
	<i>Auxis</i> spp.
	<i>Euthynnus</i> spp.,
	<i>Gymnosarda</i> spp.
	<i>Katsuwonus</i> spp.,
	<i>Scomber</i> spp.
	<i>Thunnus</i> spp.
Wahoo .....	<i>Acanthocybium solandri</i> .

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

*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°35.5' 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 28°50.2' N. lat., 162°35.0' 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.

*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 Director pursuant to § 660.66, 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. 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 § 660.26, 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.

*Qualifying landing* means a landing that meets a standard required for permit eligibility under § 660.61.

(1) *Permit renewal*. A qualifying landing for permit renewal under § 660.61(e) is a landing that contained 2,500 lb (1,134 kg) of bottomfish from the NWHI or a landing of at least 2,500 lb (1,134 kg) of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

(2) *New access eligibility points*. A qualifying landing for eligibility points under § 660.61(g) is any landing of bottomfish from the NWHI, regardless of weight, if made on or before August 7, 1985; or a landing of at least 2,500 lb (1,134 kg) of bottomfish lawfully harvested from the NWHI, or a landing of at least 2,500 lb (1,134 kg) of fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

*Receiving vessel permit* means a permit required by § 660.21(c) for a receiving vessel to transship or land Pacific pelagic management unit species taken by other vessels using longline gear.

*Regional Director* means the Director, Southwest 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> .
Raftfish .....	<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.

*Special Agent-In-Charge (SAC)* means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

*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 equipment owned by NMFS, installed on vessels by NMFS, and required by subpart C of this part to track and transmit the positions from longline fishing vessels.

#### **§ 660.13 Permits and fees.**

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

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

(c) *Application.* (1) A Southwest Region Federal Fisheries application form may be obtained from the Pacific Area Office to apply for a permit to operate in any of the fisheries regulated under subparts C, D, E, and F of this part. In no case shall the Pacific Area Office accept an application that is not on the Southwest Region Federal Fisheries application form. A completed application is one that contains all the necessary information, attachments, certifications, signatures, and fees required.

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

(d) *Change in application information.* A minimum of 10 days should be given for the Pacific Area Office 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 invalidation of the permit.

(e) *Issuance.* After receiving a complete application, the FMD will issue a permit to an applicant who is eligible under § 660.21, § 660.41, § 660.61, or § 660.81, as appropriate.

(f) *Fees.* (1) No fee is required for a permit issued under subparts D, E, and F of this part.

(2) A fee is charged for each application for a Hawaii longline limited access permit (including permit transfers and permit renewals). The amount of the fee is calculated in accordance with the procedures of the

NOAA Finance Handbook, available from the Regional Director, 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 issuance of a Hawaii longline limited access permit.

(g) *Expiration.* Permits issued under this subpart will remain valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

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

(i) *Transfer.* An application for a permit transfer as allowed under § 660.21(h), § 660.41(e), or § 660.61(c) and (d) must be submitted to the Pacific Area Office 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.

#### **§ 660.14 Reporting and recordkeeping.**

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, or 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the fishing vessel operator.

(b) *Transshipment logbooks.* Any person subject to the requirements of § 660.21(c) must maintain on board the

vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours of the day of transshipment. The original logbook form for each day of transshipment activity must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the receiving vessel operator.

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of § 660.41 must submit to the Regional Director, within 72 hours of offloading of crustaceans management unit species, an accurate and complete sales report on a form provided by the Regional Director. 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 § 660.41 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).

(e) *Modification of reporting and recordkeeping requirements.* The Regional Director 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 Director, to access, inspect, and copy all records described in paragraph (a) of this section relating to 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.

(3) *Bottomfish and seamount groundfish management unit species.* Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and subpart E of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(g) *State reporting.* Any person who has a permit under §§ 660.21 or 660.61 and who is required by state laws and regulations to maintain and submit records of landings and sales for vessels regulated by subparts C and E of this part must maintain and submit those records in the exact manner required by state laws and regulations.

#### **§ 660.15 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 § 660.13 or § 660.17, unless the vessel was at sea when the permit was issued under § 660.13, 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 § 660.13 or an EFP under § 660.17.

(c) Fail to file reports in the exact manner required by any state law or regulation, as required in § 660.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§ 660.14 and 660.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Director for inspection or copying, any records that must be made available in accordance with § 660.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§ 660.16, 660.24, and 660.47.

(g) Violate a term or condition of an EFP issued under § 660.17.

(h) Fail to report any take of or interaction with protected species as required by § 660.17(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 §§ 660.17, 660.28, 660.49, or 660.65.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Director under § 660.28, § 660.49, or § 660.65, or under any provision in an EFP issued under § 660.17.

(k) Fail to notify officials as required in §§ 660.23, 660.28, 660.43, and 660.63.

#### **§ 660.16 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. 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.

#### **§ 660.17 Experimental fishing.**

(a) *General.* The Regional Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

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

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

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

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

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

(vi) Data reporting requirements.

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the 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, 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 Director within 3 days of arriving in port.

### **Subpart C—Western Pacific Pelagic Fisheries**

#### **§ 660.21 Permits.**

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

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean, Pacific pelagic management unit species that were harvested with longline gear.

(b) A fishing vessel of the United States must be registered for use under a 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 Hawaii; or

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

(c) A receiving vessel must be registered for use with a receiving vessel permit if that vessel is used to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species that were harvested with longline gear.

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

(e) 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.

(f) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(g) 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.

(h) A limited access permit may be transferred as follows:

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

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

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

(2) An application for a permit transfer will be submitted to the Pacific Area Office as described in § 660.13(c).

(i) 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).

(j) 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.

(k) 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 Director the granting, denial, conditioning, suspension, or

transfer of a permit or requested permit under this section. To be considered by the Regional Director, the appeal will be in writing, will state the action(s) appealed, and the reasons therefor, and will be submitted within 30 days of the action(s) by the FMD. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Director may request additional information. Upon receipt of sufficient information, the Regional Director will decide the appeal in accordance with the criteria set out in this part and in the Fishery Management Plans prepared by the Council, as appropriate, 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 (k)(3) of this section; and such other considerations as deemed appropriate. The Regional Director 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 Director determines that one is appropriate, the Regional Director 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 Director.

(3) The Regional Director may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Director 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 Director's action shall constitute final Agency action for the purposes of the APA.

(4) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Director for good cause, either upon his/her own motion or upon written request

from the appellant stating the reason(s) therefor.

#### **§ 660.22 Prohibitions.**

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

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

(b) 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.

(c) Use a longline vessel without a valid longline general permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(d) Use a longline fishing vessel without a valid Hawaii longline limited access permit registered for use with that vessel to fish for Pacific pelagic management unit species in the EEZ around Hawaii.

(e) Use a receiving vessel without a valid receiving vessel permit registered for use with that vessel to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species harvested with longline gear.

(f) Transfer a permit in violation of § 660.21(h).

(g) Fish for Pacific pelagic management unit species with longline gear within the protected species zone in the NWHI.

(h) Fail to notify the NMFS Southwest Enforcement Office of intent to enter or depart the protected species zone, as required under § 660.23(b).

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.17.

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

(k) Fail to comply with a term or condition governing the observer program established in § 660.28.

(l) Fail to comply with other terms and conditions that the Regional Director imposes by written notice to either the permit holder or the designated agent of the permit holder to

facilitate the details of observer placement.

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

(n) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel or a valid longline general permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(o) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

(p) Enter the EEZ around Hawaii 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.

(q) Enter the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area 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 or a longline general permit registered for use with that vessel.

(r) Fail to carry a VMS unit as required under § 660.25.

(s) 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.

(t) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(u) 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.

(v) 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.

(w) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(x) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(y) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

#### § 660.23 Notifications.

(a) The permit holder for a fishing vessel subject to the requirements of this subpart, or an agent designated by the permit holder, shall provide a notice to the Regional Director 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 Hawaii. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Director is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Director. 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 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

(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 Southwest Enforcement Office (see part 600 for address of Regional Director) 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.

#### § 660.24 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.

#### § 660.25 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 has been notified by the SAC of a specific date for installation of a VMS unit in 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 shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly 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 and the master of the vessel operating under the permit 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.

#### § 660.26 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 § 660.12.

(c) *Main Hawaiian Islands.* (1) From February 1 through September 30 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.	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'	144°33'30"
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'

#### § 660.27 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 Pacific Area Office at least 15 days before the desired effective date of the exemption.

(e) If the Regional Director determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional Director 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 Director 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 Director may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Director 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.

#### **§ 660.28 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 Director is promptly provided a modification to the notice that complies with the notice requirements. The notice will also be considered modified if the Regional Director 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 § 660.17, 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 Director'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.

(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 Director 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 Director.

(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 Director.

(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 Fisheries Observer Branch, Southwest Region, NMFS (see address for Southwest Regional Director) 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, Southwest 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.

**§ 660.29 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.

**§ 660.30 Prohibition of drift gillnetting.**

Fishing with drift gillnets in the fishery management area is prohibited, except where authorized by an EFP issued under § 660.17.

**§ 660.31 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 Director 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 Director.

(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 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 Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

**Subpart D—Western Pacific Crustacean Fisheries**

**§ 660.41 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 or Permit Area 3, must have a permit issued for such a 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 § 660.13.

(c) *Application.* An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13. 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 Area 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 Area 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 § 660.13. 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 Director may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

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

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

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

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

order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

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

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

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

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

#### § 660.42 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.16, 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 § 660.41;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 660.48;

(iii) From closed areas for lobsters, as specified in § 660.46;

(iv) During a closed season, as specified in § 660.45; or

(v) After the closure date, as specified in § 660.50, and until the fishery opens again in the following calendar year.

(2) Fail to report before landing or offloading as specified in § 660.43.

(3) Fail to comply with any protective measures implemented under § 660.51 or § 660.52.

(4) Possess on a fishing vessel in the crustaceans fishery management area any lobster trap when fishing for lobster is prohibited as specified in §§ 660.45, 660.50, 660.51, or 660.52.

(5) Leave a trap unattended in the Management Area except as provided in § 660.48.

(6) 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 § 660.48.

(7) Land lobsters taken in Permit Area 1 after the closure date, as specified in

§ 660.50, until the fishery opens again the following year.

(8) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Director for inspection and copying any records that must be made available in accordance with § 660.14(f)(2).

(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 § 660.48; or

(ii) During a closed season, as specified in § 660.45(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 § 660.44.

(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 § 660.44.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 660.44.

#### § 660.43 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 offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Director 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.

#### § 660.44 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.

#### § 660.45 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 June, July, and August.

**§ 660.46 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.

**§ 660.47 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.

**§ 660.48 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 NMFS Law Enforcement Office 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.

(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.

**§ 660.49 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 Director.

**§ 660.50 Harvest limitation program.**

(a) *General.* A harvest guideline 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 Director shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources, to establish the annual harvest guideline in accordance with the FMP.

(2) NMFS shall publish a document indicating the annual harvest guideline in the Federal Register by March 31 each year, and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Director shall determine, on the basis of the information reported to NMFS during the open season by the operator of each vessel fishing, when the harvest guideline will be reached. Notice of this determination, with a specification of the closure date after which fishing for lobster or further landings of lobster taken in Permit Area 1 will be prohibited, will be provided to each permit holder and operator of each permitted vessel or announced in the Federal Register. At least 5 days advance notice of the effective date of the prohibition on landings will be given.

(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 Director shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

**§ 660.51 Monk seal protective measures.**

(a) *General.* This section establishes a procedure that will be followed if the Regional Director 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 Director will notify all interested parties of the facts known about the incident. The Regional

Director 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 Director 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 Director will make the results of the investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Director 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 Director 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 Director 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 Director.* If the Regional Director decides that protective measures are necessary and appropriate, the Regional Director 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 Director concludes that protective measures are necessary and appropriate, the Regional Director 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 Director's recommendation, NMFS will publish an action in the Federal Register that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) *Notification of "no action."* If, at any point in the process described in this section, the Regional Director 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 Director or submitted by interested parties in deciding whether to repeal the protective measures.

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

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

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

#### **§ 660.52 Monk seal emergency protective measures.**

(a) *Determination of emergency.* If, at any time during the process described in § 660.51, the Regional Director 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 Director 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 Director will determine the appropriate emergency protective measures.

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

(3) The Regional Director 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 Director 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 § 660.51.

#### **§ 660.53 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 Director 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 Director.

(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 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 Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

**§ 660.54 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****§ 660.61 Permits.**

(a) *Applicability.* (1) The owner of any vessel being used to fish for bottomfish or seamount groundfish species in the management area must have a permit issued under this section for that vessel.

(2) No vessel owner may have permits for a single vessel to harvest bottomfish in the Ho'omalulu Zone and the Mau Zone at the same time.

(b) *Application.* (1) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(2) Before the Regional Director issues a Mau Zone or Ho'omalulu 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.

(3) Each applicant for a Ho'omalulu zone permit will submit a supplementary information sheet to be provided by the Pacific Area Office. Each application for a Ho'omalulu zone permit will 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; and

(ii) Copies 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; or

(iii) If the application is filed by a partnership or corporation, the application must identify the names of the owners and their respective percentage of ownership of the partnership or corporation.

(c) *Sale or transfer of Ho'omalulu Zone permits to new vessel owners.* (1) A Ho'omalulu zone permit shall not be sold or otherwise transferred to a new owner.

(2) A Ho'omalulu 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 Director.

(d) *Transfer of permits to replacement vessels.* (1) An owner of a permitted

vessel may, without limitation, transfer his or her permit to another vessel owned by him or her, provided that the replacement vessel does not exceed 60 ft (18.3 m) in length and that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the intent to make the transfer of the permit.

(2) An owner of a permitted vessel may apply to the Regional Director for approval to use the permit for a replacement vessel greater than 60 ft (18.3 m) in length. The Regional Director may allow this change upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has equal catching power as the original vessel, or that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, and that the change is not inconsistent with the objectives of the program.

(3) The Regional Director 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) *Supplementary requirements for permit renewal.* (1) A permit will be eligible for renewal if the vessel covered by the permit makes three or more qualifying landings as defined in § 660.12 during the permit 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 Director for waiver of the landing requirement. If the Regional Director finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Director 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) *Supplementary requirements for new limited access permits.* The Regional Director may issue new vessel permits under this part when the Regional Director has determined, in consultation with the Council, that bottomfish stocks in the Ho'omalulu Zone are able to support additional fishing effort. This shall be established by determining that the total estimated annual revenue to the fleet exceeds the total estimated annual fixed and variable costs to the fleet in the Ho'omalulu Zone by an amount at least equal to the average cost of a vessel year. This determination shall be made

and published annually in association with the annual report required under § 660.67.

(g) *Eligibility for new limited access permits.* When the Regional Director 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 shall be assigned for each year in which the applicant was owner or captain of a vessel that made three or more qualifying landings of bottomfish from the NWHI.

(ii) One point shall 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) Points will be assigned only under paragraph (g)(1)(i) or (ii) of this section for any 1 year.

(iv) Points will be assigned for every year for which the requisite landings can be documented.

(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 Director through a lottery.

(4) *Notification.* The Regional Director 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) *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, conditioning, or suspension of their permit or a permit affecting their interests to the Assistant Administrator. In order to be considered by the Assistant Administrator, such 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 Director. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Assistant 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 Assistant Administrator will decide the appeal in accordance with the permit eligibility criteria set forth in this section and the amendment to 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 Assistant 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.

(3) If a hearing is requested, or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the Federal Register. Such a hearing shall normally be held no later than 30 days following publication of the notice in the Federal Register, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested 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 Assistant Administrator.

(4) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant 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 Assistant Administrator's action shall constitute final action for the agency for the purposes of the APA.

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

#### **§ 660.62 Prohibitions.**

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.15, it is unlawful for any person to do any of the following:

(a) Fish for bottomfish or seamount groundfish using gear prohibited under § 660.64.

(b) Fish for bottomfish in the Ho'omalulu Zone without a limited access permit issued under §§ 660.13 and 660.61.

(c) Fish for bottomfish in the Mau Zone without a permit issued under §§ 660.13 and 660.61.

(d) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalulu Zone permit without completing a protected species workshop conducted by NMFS, as required by § 660.61.

(e) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalulu Zone, as required by § 660.63.

(f) Fish within any protected species study zone in the NWHI without notifying the Regional Director of the intent to fish in these zones, as required under § 660.63.

#### **§ 660.63 Notification.**

(a) The owner or operator of a fishing vessel subject to this subpart must inform the Pacific Area Office 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 § 660.12. 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.

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

#### **§ 660.64 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 § 660.61 or otherwise established to be fishing for bottomfish or seamount groundfish in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances

for the purpose of harvesting bottomfish and seamount groundfish is prohibited.

#### **§ 660.65 At-sea observer coverage.**

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

(b) The Pacific Area Office 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 temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Director prior to the vessel's departure from port.

#### **§ 660.66 Protected species conservation.**

The Regional Director may change the size of the protected species study zones defined in § 660.12 of this subpart:

(a) If the Regional Director 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.

#### **§ 660.67 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 Director 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 Director 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 Director 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 Director 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 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 Director on administrative decisions.

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

(3) If prior participation in the fishery is used as a factor in any access limitation system recommended by the Council, August 7, 1985, is the date selected by the Council as the date to be used for the NWHI and May 30, 1986, for American Samoa and Guam.

#### **§ 660.68 Fishing moratorium on Hancock Seamount.**

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 1998.

#### **§ 660.69 Management subareas.**

(a) The bottomfish fishery management area is divided into five subareas for the regulation of bottomfish and seamount groundfish fishing 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'omalū 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.

(b) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, and the Territory of Guam (the "3 mile-limit").

(c) The outer boundary of the 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 outer boundary of the fishery management area north of Guam will extend to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

#### Subpart F—Precious Corals Fisheries

##### § 660.81 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 § 660.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 660.12.

(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 Director any current permit for the precious corals fishery issued under § 660.13.

(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 § 660.13.

##### § 660.82 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 660.15, 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 § 660.13 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 § 660.88.

(2) In refugia specified in § 660.12.

(3) In a bed for which the quota specified in § 660.84 has been attained.

(4) In violation of any permit issued under § 660.13 or § 660.17.

(c) Take and retain, possess, or land any pink coral from the Makapuu Bed (Permit Area E-B-1), Keahole Point Bed (Permit Area C-B-1), or Kaena Point Bed (Permit Area C-B-2) that is less than the minimum height specified in § 660.86, unless:

(1) A valid EFP was issued under § 660.17 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.

##### § 660.83 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.

##### § 660.84 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 nonselective coral harvesting after the 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 Director 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 Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

##### § 660.85 Closures.

(a) If the Regional Director 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.

##### § 660.86 Size restrictions.

Pink coral harvested from the Makapuu bed (E-B-1), the Keahole Point Bed (C-B-1), and the Kaena Point Bed (C-B-2), must have attained a minimum height of 10 inches (25.4 cm). There are no size limits for precious coral from other beds or other species.

##### § 660.87 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.

##### § 660.88 Gear restrictions.

(a) *Selective gear.* Only selective gear may be used to harvest coral from the EEZ of the main Hawaiian Islands.

(b) *Selective or non-selective gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and exploratory areas other than the EEZ off the main Hawaiian Islands.

#### Subpart G—West Coast Groundfish Fisheries

##### 660.301 Purpose and scope.

This subpart implements the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. These regulations govern groundfish fishing vessels of the United States in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

##### § 660.302 Definitions.

*At-sea processing* means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shoreside or on the water.

*Closure*, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

*Commercial fishing* means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

**Commercial harvest guideline or commercial quota** means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes or for recreational fisheries. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

**Council** means the Pacific Fishery Management Council, including its Groundfish Management Team, Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel (GAP), and any other committee established by the Council.

**Exempted gear** means all types of fishing gear except longline, trap (or pot), and groundfish trawl gear. Exempted gear includes trawl gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber south of Pt. Arena, under the authority of a State of California limited entry permit for the sea cucumber fishery.

**Fishery management area** means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

**Fisheries Management Division (FMD)** means the Chief, Fisheries Management Division, Northwest Regional Office, NMFS, or a designee.

**Fishing gear** includes the following types of gear and equipment used in the groundfish fishery:

(1) **Bobbin trawl.** The same as a roller trawl, a type of bottom trawl.

(2) **Bottom trawl.** A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls, Danish and Scottish seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a pelagic trawl in § 660.322 is a bottom trawl.

(3) **Chafing gear.** Webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(4) **Codend.** (See § 600.10).

(5) **Commercial vertical hook-and-line.** Commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(6) **Double-bar mesh.** Two lengths of twine tied into a single knot.

(7) **Double-walled codend.** A codend constructed of two walls of webbing.

(8) **Fixed gear (anchored nontrawl gear).** Longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(9) **Gillnet.** (See § 600.10).

(10) **Hook-and-line.** One or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(11) **Longline.** A stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include commercial vertical hook-and-line or troll gear.

(12) **Mesh size.** The opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(13) **Nontrawl gear.** All legal commercial groundfish gear other than trawl gear.

(14) **Pelagic (midwater or off-bottom) trawl.** A trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

(15) **Pot.** A trap.

(16) **Roller trawl (bobbin trawl).** A trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

(17) **Set net.** A stationary, buoyed, and anchored gillnet or trammel net.

(18) **Single-walled codend.** A codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(19) **Spear.** A sharp, pointed, or barbed instrument on a shaft.

(20) **Trammel net.** A gillnet made with two or more walls joined to a common float line.

(21) **Trap (or pot).** A portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(22) **Trawl riblines.** Heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

**Fishing trip** is a period of time between landings when fishing is conducted.

**Fishing year** is the year beginning at 0801 GMT (0001 local time) on January 1 and ending at 0800 GMT on January 1 (2400 local time on December 31).

**Groundfish** means species managed by the PCGFMP, specifically:

Sharks:

leopard shark, *Triakis semifasciata*  
soupfin shark, *Galeorhinus zyopterus*  
spiny dogfish, *Squalus acanthias*

Skates:

big skate, *Raja binoculata*  
California skate, *R. inornata*  
longnose skate, *R. rhina*

Ratfish:

ratfish, *Hydrolagus collieri*

Morids:

finescale codling, *Antimora microlepis*

Grenadiers:

Pacific rattail, *Coryphaenoides acrolepis*

Roundfish:

cabezon, *Scorpaenichthys marmoratus*  
jack mackerel (north of 39° N. lat.),  
*Trachurus symmetricus*  
kelp greenling, *Hexagrammos decagrammus*  
lingcod, *Ophiodon elongatus*  
Pacific cod, *Gadus macrocephalus*  
Pacific whiting, *Merluccius productus*  
sablefish, *Anoplopoma fimbria*

Rockfish:

aurora rockfish, *Sebastes aurora*  
bank rockfish, *S. rufus*  
black rockfish, *S. melanops*  
black and yellow rockfish, *S. chrysomelas*  
blackgill rockfish, *S. melanostomus*  
blue rockfish, *S. mystinus*  
bocaccio, *S. paucispinis*  
bronzespotted rockfish, *S. gilli*  
brown rockfish, *S. auriculatus*  
calico rockfish, *S. dalli*  
California scorpionfish, *Scorpaena guttata*  
canary rockfish, *Sebastes pinniger*  
chillipepper, *S. goodei*  
China rockfish, *S. nebulosus*  
copper rockfish, *S. caurinus*  
cowcod, *S. levis*  
darkblotched rockfish, *S. crameri*  
dusty rockfish, *S. ciliatus*  
flag rockfish, *S. rubrivinctus*  
gopher rockfish, *S. carnatus*  
grass rockfish, *S. rastrelliger*  
greenblotched rockfish, *S. rosenblatti*  
greenspotted rockfish, *S. chlorostictus*  
greenstriped rockfish, *S. elongatus*  
harlequin rockfish, *S. variegatus*  
honeycomb rockfish, *S. umbrosus*  
kelp rockfish, *S. atrovirens*  
longspine thornyhead, *Sebastolobus altivelis*  
Mexican rockfish, *Sebastes macdonaldi*  
olive rockfish, *S. serranoides*  
Pacific ocean perch, *S. alutus*  
pink rockfish, *S. eos*  
quillback rockfish, *S. maliger*  
redbanded rockfish, *S. babcocki*  
redstripe rockfish, *S. proriger*  
rosethorn rockfish, *S. helvomaculatus*  
rosy rockfish, *S. rosaceus*  
rougheye rockfish, *S. aleutianus*  
sharpchin rockfish, *S. zacentrus*  
shortbelly rockfish, *S. jordani*  
shorttraker rockfish, *S. borealis*  
shortspine thornyhead, *Sebastolobus alascanus*  
silvergray rockfish, *Sebastes brevispinis*  
speckled rockfish, *S. ovalis*  
splitnose rockfish, *S. diploproa*  
squarespot rockfish, *S. hopkinsi*  
starry rockfish, *S. constellatus*

stripetail rockfish, *S. saxicola*  
 tiger rockfish, *S. nigrocinctus*  
 treefish, *S. serriceps*  
 vermilion rockfish, *S. miniatus*  
 widow rockfish, *S. entomelas*  
 yelloweye rockfish, *S. ruberrimus*  
 yellowmouth rockfish, *S. reedi*  
 yellowtail rockfish, *S. flavidus*

All genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California are included, even if not listed above. The Scorpaenidae genera are *Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastolobus*.

**Flatfish:**

arrowtooth flounder (arrowtooth turbot),  
*Atheresthes stomias*  
 butter sole, *Isopsetta isolepis*  
 curlfin sole, *Pleuronichthys decurrens*  
 Dover sole, *Microstomus pacificus*  
 English sole, *Parophrys vetulus*  
 flathead sole, *Hippoglossoides elassodon*  
 Pacific sanddab, *Citharichthys sordidus*  
 petrale sole, *Eopsetta jordani*  
 rex sole, *Glyptocephalus zachirus*  
 rock sole, *Lepidopsetta bilineata*  
 sand sole, *Psettichthys melanostictus*  
 starry flounder, *Platichthys stellatus*

**Groundfish trawl** means trawl gear that is used under the authority of a valid limited entry permit issued under this subpart endorsed for trawl gear. It does not include any type of trawl gear listed as "exempted gear."

**Harvest guideline** means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

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

**Land or landing** means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

**Length overall (LOA)** (with respect to a vessel) means the length overall set forth in the Certificate of Documentation (CG-1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel; for vessels that do not have the LOA stated in an official document, the LOA is the LOA as determined by the USCG or by a marine surveyor in accordance with the USCG method for measuring LOA.

**Limited entry fishery** means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited entry fishery.

**Limited entry gear** means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

**Limited entry permit** means the permit required to participate in the limited entry fishery, and includes the gear endorsements affixed to the permit unless specified otherwise.

**Open access fishery** means the fishery composed of vessels using exempted gear, and longline and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery.

**Open access gear** means all types of fishing gear except:

(1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) Trawl gear.

**Owner of a vessel or vessel owner**, as used in this subpart, means a person identified as the current owner in the Certificate of Documentation (CG-1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.

**Pacific Coast Groundfish Fishery Management Plan (PCGFMP)** means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the Pacific Fishery Management Council and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

**Permit holder** means a permit owner or a permit lessee.

**Permit lessee** means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion to the permit owner.

**Permit owner** means a person who owns a limited entry permit.

**Person**, as it applies to limited entry and open access fisheries conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

**Processing or to process** means the preparation or packaging of groundfish to render it suitable for human consumption, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

**Prohibited species** means those species and species groups whose retention is prohibited unless

authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

**Quota** means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

**Recreational fishing** means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

**Regional Director** means the Director, Northwest Region, NMFS. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, "Regional Director" means the Director, Northwest Region, NMFS, acting upon the recommendation of the Director, Southwest Region, NMFS.

**Reserve** means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates of DAP and JVP.

**Round weight** (See § 600.10).

**Shoreside processing** means processing that takes place in a facility that is fixed permanently to land.

**Specification** is a numerical or descriptive designation of a management objective, including but not limited to: ABC; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.

**Target fishing** means fishing for the primary purpose of catching a particular species or species group (the target species).

**Totally lost** means the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

**Trip limit** means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board the vessel, that may be taken and retained, possessed, or landed from a single fishing trip.

**§ 660.303 Reporting and recordkeeping.**

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic



industry will be conducted biannually by NMFS to determine amounts of fish that will be made available to foreign fishing and JVP. No additional Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law.

#### § 660.304 Management areas.

(a) *Vancouver*. (1) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35'75" N. lat., 124°4300 W. long.) south of the International Boundary between the U.S. and Canada (at 48°2937.19 N. lat., 124°4333.19 W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1 .....	48°29'37.19"	124°43'33.19"
2 .....	48°30'11"	124°47'13"
3 .....	48°30'22"	124°50'21"
4 .....	48°30'14"	124°54'52"
5 .....	48°29'57"	124°59'14"
6 .....	48°29'44"	125°00'06"
7 .....	48°28'09"	125°05'47"
8 .....	48°27'10"	125°08'25"
9 .....	48°26'47"	125°09'12"
10 .....	48°20'16"	125°22'48"
11 .....	48°18'22"	125°29'58"
12 .....	48°11'05"	125°53'48"
13 .....	47°49'15"	126°40'57"
14 .....	47°36'47"	127°11'58"
15 .....	47°22'00"	127°41'23"
16 .....	46°42'05"	128°51'56"
17 .....	46°31'47"	129°07'39"

(3) The southern limit is 47°30' N. lat.

(b) *Columbia*. (1) The northern limit is 47°30' N. lat.

(2) The southern limit is 43°00' N. lat.

(c) *Eureka*. (1) The northern limit is 43°00' N. lat.

(2) The southern limit is 40°30' N. lat.

(d) *Monterey*. (1) The northern limit is 40°30' N. lat.

(2) The southern limit is 36°00' N. lat.

(e) *Conception*. (1) The northern limit is 36°00' N. lat.

(2) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1 .....	32°35'22"	117°27'49"
2 .....	32°37'37"	117°49'31"
3 .....	31°07'58"	118°36'18"
4 .....	30°32'31"	121°51'58"

(f) *International boundaries*. (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

#### § 660.305 Vessel identification.

(a) *Display*. The operator of a vessel that is over 25 ft (7.6 m) in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches (45.7 cm) high for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) high for vessels between 25 and 65 ft (7.6 and 19.8 m) in length. The length of a vessel for purposes of this section is the length set forth in USCG records or in state records, if no USCG record exists.

(b) *Maintenance of numbers*. The operator of a vessel engaged in commercial fishing for groundfish must keep the identifying markings required by paragraph (a) of this section clearly legible and in good repair, and 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.

(c) *Commercial passenger vessels*. This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

#### § 660.306 Prohibitions.

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

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Retain any prohibited species (defined in § 660.302) caught by means of fishing gear authorized under this subpart or unless authorized by part 600 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(c) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.305 or § 660.322(c).

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under part 600.745.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP under part 600.745.

(f) Take and retain, possess, or land more groundfish than specified under § 660.321, § 660.323, or under an EFP issued under part 600 of this chapter.

(g) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.303, provided that person is required to do so by the applicable state law.

(h) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 lb (1,361 kg) (round weight or round-weight equivalent).

(i) Possess, deploy, haul, or carry onboard a fishing vessel subject to these regulations a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.322, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(j) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 663.324.

(k) Take and retain or receive, except as cargo, Pacific whiting on a vessel in the fishery management area that already possesses processed Pacific

whiting on board, during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 663.324; when taking and retention is prohibited under § 663.323(a)(4)(iv), fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting.

(l) Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.323(b)(1)(ii)), more than the amount of the trip limit set for black rockfish by § 660.323 while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09'30" N. lat.), or between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.).

(m) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board (unless the vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California), without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear.

(n) Fail to carry onboard a vessel that vessel's limited entry permit if required.

(o) Make a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(p) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear

endorsement for the gear used to catch the fish.

(q) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed.

(r) Refuse to submit fishing gear of fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

#### § 660.321 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Director or the Council.

(b) *Annual actions.* The Pacific Coast groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly harvest guidelines, limited entry and open access allocations, or other approved fishery allocations. Annual specifications and management measures are developed at two Council meetings and published in the Federal Register at the beginning of the year, according to the standards and procedures in the PCGFMP and other applicable law.

(c) *Routine management measures.* Management measures designated "routine" at § 660.323(b) may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the Federal Register.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the Federal Register.

#### § 660.322 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: Trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net (anchored gillnet or trammel net), and spear.

(b) *Trawl gear—(1) Use.* Trawl nets may be used on and off the seabed. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth in this paragraph (b)(2). The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending on the gear being measured), less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

#### MINIMUM TRAWL-MESH SIZE IN INCHES <sup>1</sup>

Trawl conception type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	
Bottom .....	4.5	4.5	4.5	4.5	4.5
Pelagic .....	3.0	3.0	3.0	3.0	3.0

<sup>1</sup> Metric conversion: 3.0 inches = 7.6 cm; 4.5 inches = 11.4 cm.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweepstakes, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may

encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Fixed gear.* (1) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy, except as

provided in paragraph (c)(2) of this section.

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. "Closely tended" means that a vessel is within visual sighting distance or within 0.25 nm (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or (c)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(d) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00' N. lat.

(e) *Traps or pots.* Traps must have biodegradable escape panels constructed with # 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(f) *Recreational fishing.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear.

(g) *Spears.* Spears may be propelled by hand or by mechanical means.

#### § 660.323 Catch restrictions.

(a) Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in this section.

(1) *Black rockfish.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.

(2) *Nontrawl sablefish.* This paragraph (a)(2) applies to the limited entry fishery, except for paragraphs (a)(2)(i) and (v), which also apply to the open-access fishery.

(i) *Pre-season closure—open-access and limited entry fisheries.*

(A) Sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ may not be retained or

landed from 12 noon August 29 through 12 noon September 1.

(B) All fixed gear used to take and retain groundfish must be out of EEZ waters from 12 noon August 29 through 12 noon September 1, except that pot gear used to take and retain groundfish may be deployed and baited in the EEZ after 12 noon on August 31.

(ii) *Regular season—limited entry fishery.* The regular season for the limited entry nontrawl sablefish fishery begins at 1201 hours on August 6.

During the regular season, the limited entry nontrawl sablefish fishery may be subject to trip limits to protect juvenile sablefish. The regular season will end when 70 percent of the limited entry nontrawl allocation has been or is projected to be taken. The end of the regular season may be announced in the Federal Register either before or during the regular season.

(iii) *Mop-up season—limited entry fishery.* A mop-up season to take the remainder of the limited entry nontrawl allocation will begin about 3 weeks after the end of the regular season, or as soon as practicable thereafter. During the mop-up fishery, a cumulative trip limit will be imposed. The length of the mop-up season and amount of the cumulative trip limit, including the time period to which it applies, will be determined by the Regional Director in consultation with the Council or its designees, and will be based primarily on the amount of fish remaining in the allocation and the number of participants anticipated. The Regional Director may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season.

(iv) *Other announcements.* The dates and times that the regular season ends (and trip limits on sablefish of all sizes are resumed) and the mop-up season begins and ends, and the size of the trip limit for the mop-up fishery, will be announced in the Federal Register, and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date. A vessel landing sablefish in Puget Sound that was taken under a limited entry permit with nontrawl gear during a regular season is not subject to trip limits on that trip (except the regular season trip limits to protect juvenile sablefish), provided the landing complies with Washington State regulations governing sablefish landings in Puget Sound after the regular season.

(v) *Trip limits.* Trip and/or frequency limits may be imposed in the limited entry fishery before and after the regular season, and after the mop-up season, under paragraph (b) of this section. Trip

and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under paragraph (b) of this section. Trip limits may be imposed in the open-access fishery at any time under paragraph (b) of this section.

(3) *Pacific whiting—(i) Season.* The regular season for Pacific whiting begins on May 15 north of 42°00' N. lat., on March 1 between 42°00' N. lat. and 40°30' N. lat., and on April 15 south of 40°30' N. lat. Before and after the regular season, trip landing or frequency limits may be imposed under paragraph (b) of this section.

(ii) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(A) *Klamath River Salmon Conservation Zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23' W. long. (approximately 12 nm from shore), and on the south by 41°26'48" N. lat. (approximately 6 nm south of the Klamath River mouth).

(B) *Columbia River Salmon Conservation Zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18' N. lat. to 124°13'18" W. long., then southerly along a line of 167 True to 46°11'06" N. lat. and 124°11' W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(iii) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.321 or § 660.323, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43°00' to 40°30' N. lat.).

(iv) *At-sea processing.* Pacific whiting may not be processed at sea south of 42°00' N. lat. (Oregon-California border).

(v) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00' N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00' N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in *The Nautical Almanac* issued annually by the

Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(4) *Pacific whiting—allocation.* The following provisions apply from 1994 through 1996—

(i) *Shoreside reserve.* When 60 percent of the commercial harvest guideline for Pacific whiting has been or is projected to be taken, further at-sea processing of Pacific whiting will be prohibited pursuant to paragraph (a)(4)(iv) of this section. The remaining 40 percent of the harvest guideline is reserved for harvest by vessels delivering to shoreside processors.

(ii) *Release of reserve.* That portion of the commercial harvest guideline that the Regional Director determines will not be used by shoreside processors by the end of that fishing year shall be made available for harvest by all fishing vessels, regardless of where they deliver, on August 15 or as soon as practicable thereafter. NMFS may again release whiting at a later date if it becomes obvious, after August 15, that shore-based needs have been substantially over-estimated, but only after consultation with the Council and only to insure full utilization of the resource.

(iii) *Estimates.* Estimates of the amount of Pacific whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Assistant Administrator will announce in the Federal Register when 60 percent of the commercial harvest guideline for whiting has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited. The Assistant Administrator will publish a document in the Federal Register to announce any release of the reserve on August 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206-526-6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF),

followed by publication in the Federal Register, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the Federal Register if they first have been designated as "routine" according to the applicable procedures in the PCGFMP. The following catch restrictions are designated as routine for the reasons given in paragraph (b)(1)(ii) of this section:

(1) *Commercial-limited entry and open access fisheries—*

(i) *Species and gear.* (A) Widow rockfish—all gear—trip landing and frequency limits.

(B) *Sebastes complex*—all gear—trip landing and frequency limits.

(C) Yellowtail rockfish—all gear—trip landing and frequency limits.

(D) Pacific ocean perch—all gear—trip landing and frequency limits.

(E) Sablefish—all gear—trip landing, frequency, and size limits.

(F) Dover sole—all gear—trip landing and frequency limits.

(G) Thornyheads (shortspine thornyheads or longspine thornyheads, separately or combined)—all gear—trip landing and frequency limits.

(H) Bocaccio—all gear—trip landing and frequency limits.

(I) Pacific whiting—all gear—trip landing and frequency limits.

(J) Lingcod—all gear—trip landing and frequency limits; size limits.

(K) Canary rockfish—all gear—trip landing and frequency limits.

(L) All groundfish, separately or in any combination—any legal open access gear (including non-groundfish trawl gear used to harvest pink shrimp, spot or ridgeback prawns, California halibut or sea cucumbers in accordance with the regulations in this subpart)—trip landing and frequency limits. (Size limits designated routine in this section continue to apply.)

(ii) *Reasons for "routine" management measures.* All routine management measures on commercial fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Trip landing and frequency limits—to extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target

fishing while allowing small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) Size limits—to protect juvenile fish; to extend the fishing season.

(2) *Recreational—(i) Species and gear.*

(A) Lingcod—all gear—bag and size limits.

(B) Rockfish—all gear—bag limits.

(ii) *Reasons for "routine" management measures.* All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Bag limits—to spread the available catch over a large number of anglers; to avoid waste; for consistency with state regulations.

(B) Size limits—to protect juvenile fish; to enhance the quality of the recreational fishing experience; for consistency with state regulations.

(c) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

#### **§ 663.324 Pacific Coast treaty Indian fisheries.**

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

(b) For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) The Pacific Coast treaty Indian tribes' usual and accustomed fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah*—That portion of the FMA north of 48°02'15" N. lat. (Norwegian Memorial) and east of 125°44'00" W. long.

(2) *Quileute*—That portion of the FMA between 48°07'36" N. lat. (Sand Point) and 47°31'42" N. lat. (Queets River) and east of 125°44'00" W. long.

(3) *Hoh*—That portion of the FMA between 47°54'18" N. lat. (Quillayute River) and 47°21'00" N. lat. (Quinault River) and east of 125°44'00" W. long.

(4) *Quinalt*—That portion of the FMA between 47°40'06" N. lat. (Destruction Island) and 46°53'18" N. lat. (Point Chehalis) and east of 125°44'00" W. long.

(d) *Procedures*. The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Director, prior to the first of the Council's two annual groundfish meetings. The Secretary generally will announce the annual tribal allocation at the same time as the annual specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

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

(f) A limited entry permit under subpart C is not required for participation in a tribal fishery described in paragraph (d) of this section.

(g) Fishing under this section by a member of a Pacific Coast treaty Indian tribe within their usual and accustomed fishing area is not subject to the provisions of other sections of this part.

(h) Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in paragraph (d) of this section.

(i) Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation or regulation under this section, is subject to the regulations in the other sections of this part.

(j) *Black rockfish*. Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established annually for the

areas between the U.S.-Canadian border and Cape Alava (48°09'30" N. lat.) and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), in accordance with the procedures for implementing annual specifications. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

(k) *Groundfish without a tribal allocation*. Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

#### **§ 660.331 Limited entry and open access fisheries—general.**

All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

#### **§ 660.332 Allocations.**

(a) *General*. The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

(1) *Limited entry allocation*. The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides for recreational or tribal Indian fisheries) minus the allocation to the open access fishery.

(2) *Open access allocation*. The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational or tribal Indian fisheries. For management areas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(b) *Open access allocation percentage*. For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(1) Computing the total catch for that species during the window period by

any vessel that does not initially receive a limited entry permit.

(2) Dividing that amount by the total catch during the window period by all gear.

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation. If a gear type is prohibited by a state or the Secretary and a vessel thereby qualifies for a limited entry permit under this subpart, or if a small limited entry fleet is incorporated into the limited entry fishery under § 660.338, the window-period catch of these vessels will be deducted from the open access fishery's historical catch levels and the open access allocation percentage recalculated accordingly.

(c) *Catch accounting between the limited entry and open access fisheries*. Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines*. Additional guidelines governing determination of the limited entry and open access allocations are in the PCGFMP.

(e) *Treaty Indian fisheries*. Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to the regulations governing limited entry and open access fisheries.

(f) *Recreational fisheries*. Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be set aside prior to dividing the commercial allocation between the commercial limited entry and open access fisheries.

#### **§ 660.333 Limited entry fishery-general.**

(a) *General*. Participation in the limited entry fishery requires that the owner of a vessel have a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. There are four types

of gear endorsements: "A," "Provisional A," "B," and "Designated species B." More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear. All fishing with open access gear is subject to regulations applicable to the open access fishery. Vessels with limited entry permits may also participate in the open access fishery when the limited entry fishery is closed, but only with open access gear.

(b) *Renewal of limited entry permits and gear endorsements.*

(1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notification to renew limited entry permits will be issued by FMD prior to September 1 each year to the most recent address of the permit owner. The permit owner shall provide FMD with notice of any address change within 15 days of the change.

(3) A limited entry permit that is allowed to expire will not be renewed unless the FMD determines that failure to renew was proximately caused by the illness, injury, or death of the permit owner.

(c) *Transfer and registration of limited entry permits and gear endorsements.*

(1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear endorsements as are eligible for transfer with the permit. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit.

(3) Application forms for the transfer and registration of limited entry permits are available from the FMD (see part 600 for address of the Regional Director). Contents of the application, and required supporting documentation, are specified in the application form.

(4) The FMD will maintain records of all limited entry permits that have been

issued, renewed, transferred, registered, or replaced.

(d) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(2) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

(4) Such other relevant, credible evidence as the applicant may submit, or the FMD or the Regional Director request or acquire, may also be considered.

(e) *Initial decisions.* Initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the FMD.

Adverse decisions shall be in writing and shall state the reasons therefor. The FMD may decline to act on an application for issuance, renewal, transfer, or registration of a limited entry permit if the permit sanction provisions of the Magnuson Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(f) *Transfers.* Limited entry permits are transferable as follows:

(1) The permit owner may transfer (by sale, assignment, lease, bequest, intestate succession, barter, trade, gift, or other form of conveyance) the limited entry permit to a different person. The permit holder may register the permit for use with a different vessel under the same ownership, subject to the conditions set forth in this subpart.

(2) Gear endorsements may not be transferred separately from the limited entry permit.

(3) Except as provided in §§ 660.335(b), 660.336(b), and 660.337(b)(2), only "A" gear endorsements remain valid with the transfer of a limited entry permit.

(g) *Eligibility.* 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 limited entry permit.

(h) *Vessel size endorsements—(1) General.* The limited entry permit will

be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit was initially issued under section 14.3.2.3.8 of the FMP [re pre-1991 replacement vessels qualifying for "provisional A" permits] for a replacement vessel that was more than 5 ft (1.52 m) longer than the replaced vessel, the permit will be endorsed for the size of the replacement vessel.

(ii) If the permit was initially issued to a replacement trawl vessel that was more than 5 ft (1.52 m) shorter than the replaced vessel, it will be endorsed for the size of the smaller replacement vessel.

(iii) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(iv) When permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size of the larger vessel.

(2) *Limitations of size endorsements—*

(i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 ft (1.52 m) shorter and 5 ft (1.52 m) longer than the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement under paragraph (h)(1)(iii) of this section.

(iii) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls

between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

(i) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

**§ 660.334 Limited entry permits—"A" endorsement.**

(a) A limited entry permit with an "A" endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(b) An "A" endorsement is transferable with the limited entry permit to another person, or a different vessel under the same ownership under § 660.333.

(c) An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed (see § 660.333).

**§ 660.335 Limited entry permits—"Provisional A" endorsement.**

(a) A "provisional A" endorsement entitles the permit owner to fish for all groundfish species with the types of limited entry gear specified in the endorsement.

(b) A "provisional A" endorsement is not transferrable except as specified in the PCGFMP.

(c) The holder of a "provisional A" endorsement must comply with the requirements set out in the PCGFMP at 14.3.2.4 in order for the permit to be upgraded to an "A" permit.

(d) A "provisional A" endorsement expires at the end of any of the three consecutive 365-day periods (during the 3-year qualifying period) in which a vessel's landings do not meet the applicable landing requirement or upon failure to renew the limited entry permit. A "provisional A" endorsement that expires will not be reissued.

**§ 660.336 Limited entry permits—"B" endorsement.**

(a) A limited entry permit with a "B" endorsement entitles the permit owner to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(b) A "B" endorsement is not transferable to another person, and may not be used with another vessel under the same ownership, unless the vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel owned by the same owner.

(c) All "B" endorsements expire on December 31, 1996.

(d) A "B" endorsement expires on failure to renew the limited entry permit.

**§ 660.337 Limited entry permits—"designated species B" endorsement.**

(a) *Issuance criteria*—(1) *General.* *Designated species* means Pacific whiting, jack mackerel north of 39° N. lat., and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries in the PCGFMP.

(2) *Catch limit.* On or about October 1 of each year, the FMD will determine the commitment of persons with limited entry permits with "A" gear endorsements (the "limited entry fleet") to harvest each designated species for delivery to domestic processors during the coming year. "Commitment" means a permit holder's contract or agreement with a specific domestic processor to deliver an estimated amount of the designated species. The "designated species B" endorsement catch limit is the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If the commitment is less than DAP and the harvest guideline or quota for the species, "designated species B" endorsements valid for delivery to domestic processors will be issued in numbers necessary to reach but not exceed the harvest guideline or quota. "Designated species B" endorsements also may be issued for delivery to foreign processors of designated species for which a JVP is established. If, at any time during the fishing year, the FMD determines that any part of the limited entry fleet commitment will not be taken, the Regional Director will make a reapportionment to the "designated species B" endorsement catch limit. The amount of the annual limited entry fleet commitment, "designated species B" endorsement catch limit, and the amounts and timing of any reapportionments to the "designated species B" endorsement catch limit will be announced in the Federal Register.

(3) *Procedure for issuance.* Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following year. Applications are available from the FMD. Applicants are required to specify their commitments for delivery of the designated species for the coming year. On or about November 1 of each year, the FMD will establish a prioritized list of applicants based on seniority (number of years the vessel has fished for the designated species). A vessel which replaces a lost vessel, consistent with the standards in the PCGFMP, has the same seniority status as the replaced vessel. Vessels with

equal seniority will be ranked equally. "Designated species B" endorsements will be issued first to all vessels with the highest seniority, then to those with the next highest seniority, and so on down the list. No further endorsements will be issued when it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species B" catch limit. If there are insufficient commitments by senior applicants to take the "designated species B" catch limit, additional applications will be ranked by lottery and a number of endorsements sufficient to take the catch limit will be issued.

(b) *Attributes.* (1) A limited entry permit with a "designated species B" endorsement entitles the permit recipient to fish only for the species, and only with the gear, specified in the endorsement.

(2) A "designated species B" endorsement is not transferable to another person, and may not be used with a different vessel under the same ownership, unless the vessel has been totally lost and replaced consistent with the provisions of the PCGFMP, in which case the replacement vessel has the same seniority as the lost vessel for purposes of a "designated species B" endorsement.

(3) A "designated species B" endorsement is valid only for the fishing year for which it is issued.

**§ 660.338 Limited entry permits—new permits.**

(a) Small limited entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued according to the standards and procedures set out in the PCGFMP and will carry the rights explained therein. Window period is that period from July 11, 1984, through August 1, 1988.

(b) If, after the window period, an exempt gear is prohibited by Washington, Oregon, or California or NMFS, the owners of vessels using such gear, who would not otherwise qualify for an "A" or "provisional A" endorsement, may qualify for a "provisional A" endorsement for only one of the three limited entry gears, if the vessel used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear. If a vessel would qualify for an endorsement



for more than one limited entry gear, the owner must choose the type of gear for which the endorsement will be issued. If an "A" or "provisional A" endorsement was previously issued for the vessel, and the endorsement was subsequently transferred or expired, no "provisional A" endorsement will be issued. Permits issued under this section will be issued according to the procedures and standards set out in the PCGFMP and will carry the rights explained therein.

(c) An owner of a vessel that qualifies under this section must apply to the FMD for a permit within 180 days of incorporation of the limited entry fleet of which the vessel is a part or within 180 days of the effective date of the prohibition of that vessel's gear. Untimely applications will be rejected unless the applicant demonstrates that circumstances beyond the applicant's control prevented submission of the application during the specified period. Illness, injury, or death of the potential applicant are the primary grounds on which untimely applications may be accepted.

#### **§ 660.339 Limited entry permit fees.**

The Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits, including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

#### **§ 660.340 Limited entry permit appeals.**

(a) Decisions on appeals of initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the Regional Director.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the FMD denying issuance, renewal, transfer, or registration of a limited entry permit, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Director.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why an exception should be granted.

(e) At the appellant's discretion, the appeal may be accompanied by a request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgement that

the confidentiality provisions of the Magnuson Act at 16 U.S.C. 1853(d) and part 600 of this chapter are waived with respect to any information supplied by the Regional Director to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of the PCGFMP in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the Regional Director will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Director's decision is the final administrative decision of the Department as of the date of the decision.

#### **§ 660.341 Limited entry permit sanctions.**

Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

### **Subpart H—West Coast Salmon Fisheries**

#### **§ 660.401 Purpose and scope.**

This subpart implements the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California developed by the Pacific Fishery Management Council. These regulations govern the management of West Coast salmon fisheries in the EEZ.

#### **§ 660.402 Definitions.**

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in this subpart have the following meanings:

*Barbless hook* means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Where barbless hooks are specified, hooks manufactured with barbs can be made barbless by forcing the point of the barb flat against the main part of the point.

*Commercial fishing* means fishing with troll fishing gear as defined annually under § 660.408, or fishing for the purpose of sale or barter of the catch.

*Council* means the Pacific Fishery Management Council.

*Dressed, head-off length of salmon* means the shortest distance between the midpoint of the clavicle arch (see Figure 3 of this subpart) and the fork of the tail,

measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails (see Figure 3 of this subpart).

*Dressed, head-off salmon* means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

*Fishery management area* means the EEZ off the coasts of Washington, Oregon, and California, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(1) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the United States and Canada (at 48°29'37" N. lat., 124°43'33" W. long.), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Northern and northwestern boundary is a line<sup>1</sup> connecting the following coordinates:

N. lat.	W. long.
48°29'37.19"	124°43'33.19"
48°30'11"	124°47'13"
48°30'22"	124°50'21"
48°30'14"	124°52'52"
48°29'57"	124°59'14"
48°29'44"	125°00'06"
48°28'09"	125°05'47"
48°27'10"	125°08'25"
48°26'47"	125°09'12"
48°20'16"	125°22'48"
48°18'22"	125°29'58"
48°11'05"	125°53'48"
47°49'15"	126°40'57"
47°36'47"	127°11'58"
47°22'00"	127°41'23"
46°42'05"	128°51'56"
46°31'47"	129°07'39"

(3) The southern boundary of the fishery management area is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates:

N. lat.	W. long.
32°35'22"	117°27'49"
32°37'37"	117°49'31"
31°07'58"	118°36'18"
30°32'31"	121°51'58"

(4) The inner boundaries of the fishery management area are subject to

<sup>1</sup> The line joining these coordinates is the provisional international boundary of the U.S. EEZ as shown on NOAA/NOS Charts #18480 and #18002.

change if the Secretary assumes responsibility for the regulation of the salmon fishery within state waters under section 306(b) of the Magnuson Act.

*Freezer trolling vessel* means a fishing vessel, equipped with troll fishing gear, that has a present capability for:

- (1) On board freezing of the catch.
- (2) Storage of the fish in a frozen condition until they are landed.

*Land or landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish onboard the vessel are counted as part of the landing.

*Plugs* means artificial fishing lures made of wood or hard plastic with one or more hooks attached. Lures commonly known as "spoons," "wobblers," "dodgers," and flexible plastic lures are not considered plugs, and may not be used where "plugs only" are specified.

*Recreational fishing* means fishing with recreational fishing gear as defined annually under § 660.408 and not for the purpose of sale or barter.

*Recreational fishing gear* will be defined annually under § 660.408.

*Regional Director* means the Director, Northwest Region, NMFS, or a designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Director, Northwest Region, NMFS, acting in consultation with the Director, Southwest Region, NMFS.

*Salmon* means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including, but not limited to:

Chinook (king) salmon, *Oncorhynchus tshawytscha*  
 Coho (silver) salmon, *Oncorhynchus kisutch*  
 Pink (humpback) salmon, *Oncorhynchus gorbuscha*  
 Chum (dog) salmon, *Oncorhynchus keta*  
 Sockeye (red) salmon, *Oncorhynchus nerka*  
 Steelhead (rainbow trout), *Oncorhynchus mykiss*

*Total length of salmon* means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

*Treaty Indian fishing* means fishing for salmon and steelhead in the fishery management area by a person authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise

fishing rights under the Treaty of Olympia.

*Troll fishing gear* will be defined annually under § 660.408.

*Whole bait* means a hook or hooks baited with whole natural bait with no device to attract fish other than a flasher.

#### § 660.403 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter, § 660.2, and paragraphs (b) and (c) of this section.

(b) Any person fishing subject to this subpart who also engages in fishing for groundfish should consult Federal regulations in subpart G for applicable requirements of that subpart, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 660.305.

(c) Any person fishing subject to this subpart is bound by the international boundaries of the fishery management area described in § 660.402, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

#### § 660.404 Recordkeeping and reporting.

(a) This subpart recognizes that catch and effort data necessary for implementation of any applicable fishery management plan are collected by the States and Indian tribes of Washington, Oregon, California, and Idaho under existing data collection requirements. Except as provided in paragraph (b) of this section, no additional catch reports will be required of fishermen or processors so long as the data collection and reporting systems operated by State agencies and Indian tribes continue to provide NMFS with statistical information adequate for management.

(b) Persons engaged in commercial fishing may be required to submit catch reports that are specified annually under § 660.408.

#### § 660.405 Prohibitions.

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

(1) Take and retain or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(2) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) While possessing on board any species not allowed to be taken in the area at the time;

(iii) Once any catch limit is attained;

(iv) By means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized under § 660.408(k) for treaty Indian fishing;

(v) In violation of any action issued under this subpart; or

(vi) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(3) Fish for salmon in an area when salmon of less than the legal minimum length for that area are on board the fishing vessel, except that this provision does not prohibit transit of an area when salmon of less than the legal minimum length for that area are on board, so long as no fishing is being conducted.

(4) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(5) Take and retain or possess on board a fishing vessel any species of salmon that is less than the applicable minimum total length, including the applicable minimum length for dressed, head-off salmon.

(6) Possess on board a fishing vessel a salmon, for which a minimum total length is extended or cannot be determined, except that dressed, head-off salmon may be possessed on board a freezer trolling vessel, unless the adipose fin of such salmon has been removed.

(7) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this subpart.

(8) Engage in recreational fishing while aboard a vessel engaged in commercial fishing. This restriction is not intended to prohibit the use of fishing gear otherwise permitted under the definitions of troll and recreational fishing gear, so long as that gear is legal in the fishery for which it is being used.

(9) Take and retain, possess, or land any steelhead taken in the course of commercial fishing in the fishery management area, unless such take and retention qualifies as treaty Indian fishing.

(10) Sell, barter, offer to sell, offer to barter, or purchase any salmon taken in the course of recreational salmon fishing.

(11) Refuse to submit fishing gear or catch subject to such person's control to

inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(12) Take and retain Pacific halibut (*Hippoglossus stenolepis*) except in accordance with regulations of the International Pacific Halibut Commission at part 300 of this title. Pacific halibut that cannot be retained lawfully must be returned to the water immediately and with the least possible injury.

(13) Violate any other provision of this subpart.

(b) The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified.

#### **§ 660.406 Exempted fishing.**

(a) NMFS may allow such exempted fishing in the fishery management area as may be recommended by the Council, the Federal Government, state government, or treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) NMFS will not allow any exempted fishery recommended by the Council unless NMFS determines that the purpose, design, and administration of the exempted fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any exempted fishery recommended by the Council and allowed by NMFS is subject to all provisions of this subpart, except those portions which relate to the purpose and nature of the exempted fishery. These exceptions will be specified in a permit issued by the Regional Director to each vessel participating in the exempted fishery and that permit must be carried aboard each participating vessel.

#### **§ 660.407 Treaty Indian fishing.**

Except as otherwise provided in this subpart, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this subpart, the Magnuson Act, and any other regulations issued under the Magnuson Act.

#### **§ 660.408 Annual actions.**

(a) *General.* NMFS will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing the action in the Federal Register under § 660.411.

Management specifications are set forth in paragraphs (b) through (n) of this section.

#### **(b) Allowable ocean harvest levels.**

The allowable ocean harvest for commercial, recreational, and treaty Indian fishing may be expressed in terms of season regulations expected to achieve a certain optimum harvest level or in terms of a particular number of fish. Procedures for determining allowable ocean harvest vary by species and fishery complexity, and are documented in the fishery management plan and Council documents.

(c) *Allocation of ocean harvest levels—(1) Coho and chinook from the U.S.-Canada border to Cape Falcon—(i) Overall allocation schedule.* Initial allocation of coho and chinook salmon north of Cape Falcon, OR, will be based on the following schedule:

Allowable non-treaty ocean harvest (thousands of fish)	Percentage <sup>1</sup>	
	Com- mercial	Rec- reational
Coho:		
0-300 .....	25	75
>300 .....	60	40
Chinook:		
0-100 .....	50	50
>100-150 .....	60	40
>150 .....	70	30

<sup>1</sup> The percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, for a total allowable ocean harvest of 150,000 chinook, the recreational allocation would be equal to 50 percent of 100,000 chinook plus 40 percent of 50,000 chinook or 50,000 + 20,000 = 70,000 chinook.

(ii) *Deviations from allocation schedule.* The initial allocation may be modified annually in accordance with paragraphs (c)(1)(iii) through (vii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (c)(1)(viii) and (ix) of this section. Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, and spawning requirements. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

(iii) *Preseason trades.* Preseason species trades (chinook and coho) may be made if they are based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel

representatives for the area north of Cape Falcon; simultaneously benefit both the commercial and recreational fisheries or benefit one fishery without harming the other; and are supported by a socio-economic analysis that compares the impacts of the recommendation to those of the standard allocation schedule to determine the allocation that best meets the allocation objectives. This analysis will be made available to the public during the preseason process for establishing annual management measures. Preseason trades will use an exchange ratio of four coho to one chinook as a desirable guideline.

(iv) *Commercial allocation.* The commercial allowable ocean harvest of chinook and coho derived during the preseason allocation process may be varied by major subareas (i.e., north of Leadbetter Point and south of Leadbetter Point) if there is need to do so to decrease impacts on weak stocks. Deviations in each major subarea will generally not exceed 50 percent of the allowable ocean harvest of each species that would have been established without a geographic deviation in the distribution of the allowable ocean harvest. Deviation of more than 50 percent will be based on a conservation need to protect the weak stocks and will provide larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation.

(v) *Recreational allocation.* The recreational allowable ocean harvest of chinook and coho derived during the preseason allocation process will be distributed among the three major recreational subareas as described in the coho and chinook distribution sections below. Additionally, based upon the recommendation of the recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon, the Council will include criteria in its preseason salmon management recommendations to guide any inseason transfer of coho among the recreational subareas to meet recreational season duration objectives. The Council may also establish additional subarea quotas with a major subarea to meet recreational season objectives based on agreement of representatives of the affected ports.

(A) *Coho distribution.* The preseason recreational allowable ocean harvest of coho north of Cape Falcon will be distributed to provide 50 percent to the area north of Leadbetter Point and 50 percent to the area south of Leadbetter Point. In years with no fishery in Washington State management area 4B, the distribution of coho north of Leadbetter Point will be divided to

provide 74 percent to the subarea between Leadbetter Point and the Queets River (Westport) and 26 percent to the subarea north of the Queets River (Neah Bay/La Push). In years when there is an area 4B fishery under state management, 25 percent of the numerical value of that fishery shall be added to the recreational allowable ocean harvest north of Leadbetter Point prior to applying the sharing percentages. That same value would then be subtracted from the Neah Bay/La Push share in order to maintain the same total distribution north of Leadbetter Point.

(B) *Chinook distribution.* Subarea distributions of chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing chinook restrictions (i.e., area closures or bag limit reductions). Chinook in excess of all-species fisheries needs may be utilized by directed chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of chinook and coho between commercial and recreational allocations in accordance with paragraph (c)(1)(iii) of this section.

(vi) *Inseason trades and transfers.* Inseason transfers, including species trades of chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the harvest management objectives specific in the fishery management plan including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer. Inseason trades or transfers may vary from the guideline ratio of four coho to one chinook to meet the allocation objectives in paragraph (c)(1)(viii) of this section.

(vii) *Other inseason provisions.* Any increase or decrease in the recreational or commercial allowable ocean harvest resulting from an inseason restructuring of a fishery or other inseason

management action does not require reallocation of the overall non-treaty allowable ocean harvest north of Cape Falcon between the recreational and commercial fisheries. Inseason redistribution of subarea quotas within the recreational fishery or the distribution of allowable coho catch transfers from the commercial fishery among subareas may deviate from the preseason distribution. Inseason management actions may be taken by the Regional Director to assure meeting the primary objective of achieving all-species fisheries without imposing chinook restrictions in each of the recreational subareas north of Cape Falcon. Such actions might include, but are not limited to: Closure from 0 to 3, 0 to 6, 3 to 200, or 5 to 200 nm from shore; closure from a point extending due west from Tatoosh Island for 5 nm, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from North Head at the Columbia River mouth north to Leadbetter Point; change in species that may be landed; or other actions as prescribed in the annual management measures.

(viii) *Allocation objectives.* The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the following objectives for the commercial and recreational fisheries. When deviation from the allocation schedule is being considered, these objectives will serve as criteria to help determine whether a user group will benefit from the deviation.

(A) Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily and area closures and restrictions on gear and daily limits.

(B) Maximize the value of the commercial harvest while providing fisheries of reasonable duration.

(ix) *Fishery allocation priorities.* The following fishery allocation priorities will provide guidance in the preseason process of establishing final harvest allocations and structuring seasons that best achieve the allocation objectives. To the extent fish are provided to each fishery by the allocation schedule, these priorities do not favor one user group over the other and should be met simultaneously for each fishery. Seasons may be structured that deviate from these priorities consistent with the allocation objectives.

(A) At total allowable harvest levels up to 300,000 coho and 100,000 chinook: For the recreational fishery, provide coho for a late June through early September all-species season;

provide chinook to allow access to coho and, if possible, a minimal chinook-only fishery prior to the all-species season; and adjust days per week and/or institute area restrictions to stabilize season duration. For the commercial fishery, provide chinook for a May and early June chinook season and provide coho for hooking mortality and/or access to a pink fishery, and ensure that part of the chinook season will occur after June 1.

(B) At total allowable harvest levels above 300,000 coho and above 100,000 chinook: For the recreational fishery, relax any restrictions in the all-species fishery and/or extend the all-species season beyond Labor Day as coho quota allows; provide chinook for a Memorial Day through late June chinook-only fishery; and adjust days per week to ensure continuity with the all-species season. For the commercial fishery, provide coho for an all-species season in late summer and/or access to a pink fishery; and leave adequate chinook from the May through June season to allow access to coho.

(2) *Coho south of Cape Falcon*—(i) *Allocation schedule.* Preseason allocation shares of coho salmon south of Cape Falcon, OR, will be determined by an allocation schedule, which is based on the following formula. The formula will be used to interpolate between allowable harvest levels as shown in the table below.

(A) Up to 350,000 allowable ocean harvest: The first 150,000 fish will be allocated to the recreational fishery. Additional fish will be allocated 66.7 percent to troll and 33.3 percent to recreational. The incidental coho mortality for a commercial all-salmon-except-coho fishery will be deducted from the troll allocation. If the troll allocation is insufficient for this purpose, the remaining number of coho needed for this estimated incidental coho mortality will be deducted from the recreational share.

(B) From 350,000 to 800,000 allowable ocean harvest: The recreational allocation is equal to 14 percent of the allowable harvest above 350,000 fish, plus 217,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(C) Above 800,000 allowable ocean harvest: The recreational allocation is equal to 10 percent of the allowable harvest above 800,000 fish, plus 280,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
2,700	2,230	82.6	470	17.4
2,600	2,140	82.3	460	17.7
2,500	2,050	82.0	450	18.0
2,400	1,960	81.7	440	18.3
2,300	1,870	81.3	430	18.7
2,200	1,780	80.9	420	19.1
2,100	1,690	80.5	410	19.5
2,000	1,600	80.0	400	20.0
1,900	1,510	79.5	390	20.5
1,800	1,420	78.9	380	21.1
1,700	1,330	78.2	370	21.8
1,600	1,240	77.5	360	22.5
1,500	1,150	76.7	350	23.3
1,400	1,060	75.7	340	24.3
1,300	970	74.6	330	25.4
1,200	880	73.3	320	26.7
1,100	790	71.8	310	28.2
1,000	700	70.0	300	30.0
900	610	67.8	290	32.2
800	520	65.0	280	35.0
700	434	62.0	266	38.0
600	348	58.0	252	42.0
500	262	52.4	238	47.6
400	176	44.0	224	56.0
350	133	38.0	217	62.0
300	100	33.3	200	66.7
200	133	16.5	167	83.5
100	(1)	(1)	(1)	(1)

<sup>1</sup> An incidental coho allowance associated with any commercial all-salmon-except-coho fishery will be deducted from the recreational share of coho during periods of low coho abundance when the commercial allocation of coho under the schedule would be insufficient to allow for incidental hooking mortality of coho in the commercial all-salmon-except-coho fishery.

(ii) *Geographic distribution.*

Allowable harvest south of Cape Falcon may be divided and portions assigned to subareas based on considerations including, but not limited to, controlling ocean harvest impacts on depressed, viable natural stocks within acceptable maximum allowable levels; stock abundance; allocation considerations; stock specific impacts; relative abundance of the salmon species in the fishery; escapement goals; and maximizing harvest potential.

(iii) *Recreational allocation at 167,000 fish or less.* When the recreational allocation is at 167,000 fish or less, the total recreational allowable ocean harvest of coho will be divided between two major subareas with independent impact quotas. The initial allocation will be 70 percent from Cape Falcon to Humbug Mountain and 30 percent south of Humbug Mountain. Coho transfers between the two impact quotas may be permitted on a one-for-one basis, if chinook constraints preclude access to coho. Horse Mountain to Point Arena will be managed for an impact guideline of 3 percent of the south of Cape Falcon recreational allocation. The recreational coho fishery between Humbug Mountain and Point Arena may be closed when it is projected that the

harvest impact between Humbug Mountain and Point Arena, combined with the projected harvest impact that will be taken south of Point Arena to the end of the season, equals the impact quota for south of Humbug Mountain. The recreational fishery for coho salmon south of Point Arena will not close upon attainment of the south of Humbug Mountain impact quota.

(iv) *Oregon coastal natural coho.* At Oregon coastal natural coho spawning escapements of 28 or fewer adults per mile, the allocation provisions of paragraph (c)(2)(i) of this section do not apply. Fisheries will be established that will provide only the minimum incidental harvest of Oregon coastal natural coho necessary to prosecute other fisheries, and that under no circumstances will cause irreparable harm to the Oregon coastal natural coho stock.

(v) *Inseason reallocation.* No later than August 15 each year, the Salmon Technical Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery that are not needed to complete the recreational seasons will be reallocated to the commercial fishery. Once reallocation has taken place, the remaining recreational quota

will change to a harvest guideline. If the harvest guideline for the recreational fishery is projected to be reached on or before Labor Day, the Regional Director may allow the recreational fishery to continue through the Labor Day weekend only if there is no significant danger of impacting the allocation of another fishery or of failing to meet an escapement goal.

(d) *Management boundaries and zones.* Management boundaries and zones will be established or adjusted to achieve a conservation purpose. A conservation purpose protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), LORAN readings, depth contours, distance from shore, or similar criteria.

(e) *Minimum harvest lengths.* The minimum harvest lengths for commercial, recreational, and treaty Indian fishing may be changed upon demonstration that a useful purpose will be served. For example, an increase in minimum size for commercially caught salmon may be necessary for

conservation or may provide a greater poundage and monetary yield from the fishery while not substantially increasing hooking mortality. The removal of a minimum size for the recreational fishery may prevent wastage of fish and outweigh the detrimental impacts of harvesting immature fish.

(f) *Recreational daily bag limits.* Recreational daily bag limits for each fishing area will be set equal to one, two, or three salmon of some combination of species. The recreational daily bag limits for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

(g) *Fishing gear restrictions.* Gear restrictions for commercial, recreational, and treaty Indian fishing may be established or modified upon demonstration that a useful purpose will be served. For example, gear restrictions may be imposed or modified to facilitate enforcement, reduce hooking mortality, or reduce gear expenses for fishermen.

(h) *Seasons*—(1) *In general.* Seasons for commercial and recreational fishing will be established or modified taking into account allowable ocean harvest levels and quotas, allocations between the commercial and recreational fisheries, and the estimated amount of effort required to catch the available fish based on past seasons.

(2) *Commercial seasons.* Commercial seasons will be established or modified taking into account wastage of fish that cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas. All-species seasons will be established to allow the maximum allowable harvest of pink and sockeye salmon without exceeding allowable chinook or coho harvest levels and within conservation and allocation constraints of the pink and sockeye stocks.

(3) *Recreational seasons.* If feasible, recreational seasons will be established or modified to encompass Memorial Day and Labor Day weekends, and to avoid the need for inseason closures.

(i) *Quotas* (by species, including fish caught 0–3 nm seaward of Washington, Oregon, and California). Quotas for commercial, recreational, and treaty Indian fishing may be established or modified to ensure that allowable ocean harvests are not exceeded. Quotas may be fixed or adjustable and used in conjunction with seasons. Any quota established does not represent a guaranteed ocean harvest, but a maximum ceiling on catch.

(j) *Selective fisheries.* In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, selective coho-only, chinook-only, or pink-only fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

(k) *Treaty Indian fishing.* (1) NMFS will establish or modify treaty Indian fishing seasons and/or fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions taking into account recommendations of the Council, proposals from affected tribes, and relevant Federal court proceedings.

(2) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems on other stocks.

(3) Any fixed or adjustable quotas established will be consistent with established treaty rights and will not exceed the harvest that would occur if the entire treaty entitlement to the weakest run were taken by treaty Indian fisheries in the fishery management area.

(4) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

(l) *Yurok and Hoopa Valley tribal fishing rights.* For purposes of section 303 of the Magnuson Act, the federally reserved fishing rights of the Yurok and Hoopa Valley Indian Tribes as set out in a legal opinion<sup>2</sup> dated October 4, 1993, by the Office of the Solicitor, Department of the Interior, are applicable law. Under section 303 of the Magnuson Act, allowable ocean harvest must be consistent with all applicable laws.

<sup>2</sup> Copies of the Solicitor's Opinion are available from the Director, Southwest Region, NMFS.

(m) *Inseason notice procedures.* Telephone hotlines and USCG broadcasts will provide actual notice of inseason actions for commercial, recreational, and treaty Indian fishing.

(n) *Reporting requirements.* Reporting requirements for commercial fishing may be imposed to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief radio report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually.

#### **§ 660.409 Inseason actions.**

(a) *Fixed inseason management provisions.* NMFS is authorized to take the following inseason management actions annually, as appropriate.

(1) *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by an inseason action issued under § 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, NMFS will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided NMFS finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. The season will be reopened by an inseason action issued under § 660.411.

(3) *Adjustment for error in preseason estimates.* NMFS may, by an inseason action issued under § 660.411, make appropriate changes in relevant seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance are identified, provided that such correction can be made in a timely manner to affect the involved fishery without disrupting the capacity to meet

the objectives of the fishery management plan.

(b) *Flexible inseason management provisions.* (1) The Regional Director will consult with the Chairman of the Council and the appropriate State Directors prior to taking any of the following flexible inseason management provisions, which include, but are not limited to, the following:

(i) Modification of quotas and/or fishing seasons.

(ii) Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations.

(iii) Modification of recreational bag limits and recreational fishing days per calendar week.

(iv) Establishment or modification of gear restrictions.

(v) Modification of boundaries, including landing boundaries, and establishment of closed areas.

(2) Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the fishery management plan. All inseason adjustments will be based on consideration of the following factors:

(i) Predicted sizes of salmon runs.

(ii) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations, if applicable.

(iii) Amount of commercial, recreational, and treaty Indian catch for each species in the area to date.

(iv) Amount of commercial, recreational, and treaty Indian fishing effort in the area to date.

(v) Estimated average daily catch per fisherman.

(vi) Predicted fishing effort for the area to the end of the scheduled season.

(vii) Other factors, as appropriate.

#### **§ 660.410 Escapement goals.**

(a) *Current escapement goals.* The following specific escapement goals are in effect. Annual management objectives for Washington coastal fall, spring, and summer chinook; Puget Sound chinook; Washington coastal coho; and Puget Sound coho are developed through fixed procedures established in the U.S. District Court.

#### **SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT**

System	Spawning <sup>1</sup> escapement goal
Sacramento River Fall Chinook <sup>2</sup> .....	122,000 to 180,000 for natural and hatchery
Klamath River Fall Chinook .....	Between 33 and 34 percent of the potential adult natural spawners, but no fewer than 35,000 naturally spawning adults in any one year. <sup>3</sup> The brood escapement rate will average 33 to 34 percent over the long term. The escapement rate for each brood may vary from the 33 to 34 percent in order to achieve the required tribal/non-tribal annual allocation.
Oregon Coastal Chinook .....	150,000 to 200,000 natural
Columbia River Chinook:	
Upper River Fall .....	40,000 bright adults above McNary Dam.
Upper River Summer .....	80,000 to 90,000 adults above Bonneville Dam.
Upper River Spring .....	100,000 to 200,000 adults above Bonneville Dam.
Lower River Spring (Willamette River) .....	30,000 to 45,000 based on run size
Oregon Coastal Coho .....	Oregon coastal natural (OCN) coho spawning escapement is based on an aggregate density of 42 naturally spawning adults per mile in standard index survey areas <sup>4</sup>
Puget Sound Pink .....	900,000 natural.
Lake Washington Sockeye <sup>5</sup> .....	300,000 to Lake Washington.
Columbia River Sockeye <sup>5</sup> .....	65,000 over Priest Rapids.

<sup>1</sup> Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

<sup>2</sup> Includes upper and lower river components.

<sup>3</sup> The minimum escapement floor of 35,000 naturally spawning adults may be modified only by amendment to the FMP.

<sup>4</sup> At OCN stock sizes below 125 percent of the annual numerical escapement goal, an exploitation rate of up to 20 percent will be allowed for incidental impacts of the combined ocean troll, sport, and freshwater fisheries. At OCN spawning escapements of 28 or fewer adults per mile, an exploitation rate of up to 20 percent may be allowed to provide only minimum incidental harvest to prosecute other fisheries, provided the rate chosen will cause no irreparable harm to the OCN stock.

<sup>5</sup> These stocks represent a negligible component of the Washington ocean harvest.

(b) *Modification of escapement goals.* NMFS is authorized, through an action issued under § 660.411, to modify an escapement goal if—

(1) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council and the Salmon Technical Team, justifies modification of an escapement goal;

(2) For Oregon coastal chinook, specific goals are developed within the overall goal for north coast and south coast stocks; or

(3) Action by a Federal court indicates that modification of an escapement goal is appropriate.

#### **§ 660.411 Notification and publication procedures.**

(a) *Notification and effective dates.* (1) Annual and certain other actions taken under §§ 660.408 and 660.410 will be implemented by an action published in the Federal Register, and will be effective upon filing, unless a later time is specified in the action.

(2) Inseason actions taken under § 660.409 will be by actual notice

available from telephone hotlines and USCG broadcasts, as specified annually. Inseason actions will also be published in the Federal Register as soon as practicable. Inseason actions will be effective from the time specified in the actual notice of the action (telephone hotlines and USCG broadcasts), or at the time the inseason action published in the Federal Register is effective, whichever comes first.

(3) Any action issued under this section will remain in effect until the expiration date stated in the action or until rescinded, modified, or



superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(b) *Public comment.* If time allows, NMFS will invite public comment prior to the effective date of any action published in the Federal Register. If NMFS determines, for good cause, that an action must be filed without affording a prior opportunity for public

comment, public comments on the action will be received by NMFS for a period of 15 days after filing of the action with the Office of the Federal Register.

(c) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during

normal office hours at the Northwest Region, NMFS. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevant to the action also will be made available for public review during normal office hours at the Southwest Region, NMFS.

TABLE 1 TO PART 660.—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota	Number of years	Gear restriction
Makapuu .....	E	P—2,000 kg .....	2	S
		G—600 kg .....	2	S
		B—600 kg .....	2	S
Ke-ahole Point .....	C	P—67 kg .....	1	.....
		G—20 kg .....	1	S
		B—17 kg .....	1	S
Kaena Point .....	C	P—67 kg .....	1	S
		G—20 kg .....	1	S
		B—17 kg .....	1	S
Brooks Bank .....	C	P—17 kg .....	1	N
		G—133 kg .....	1	N
		B—111 kg .....	1	N
180 Fathom Bank .....	C	P—222 kg .....	1	N
		G—67 kg .....	1	N
		B—56 kg .....	1	N
Westpac Bed .....	R	Zero (0 kg) .....	.....	.....
Hawaii, American Samoa, Guam, U.S. Pacific Island possessions.		X—1,000 kg (all species combined except black corals) per area.	1	N

Notes:

1. Types of corals: P=Pink G=Gold B=Bamboo.

2. There are no restrictions under this part on the harvest of black corals, except the data submission requirements (§660.3). State regulations on black coral harvesting are not superseded by this part.

3. Only 1/5 of the indicated amount is allowed if nonselective gear is used; that is, the nonselective harvest will be multiplied by 5 and counted against the quota. If both selective and nonselective methods are used, the bed will be closed when  $S+5N=Q$ , where S=selective harvest amount, N=nonselective harvest amount and Q=total harvest quota, for any single species on that bed.

4. Only selective gear may be used in the EEZ seaward of the main Hawaiian Islands; i.e., south and east of a line midway between Nihoa and Niihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.

5. S=Selective gear only; N=Nonselective or selective gear.

6. No authorized fishing for coral in refugia.

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS

Vessel length	Capacity rating
<20 .....	1.00
21 .....	1.13
22 .....	1.27
23 .....	1.42
24 .....	1.58
25 .....	1.75
26 .....	1.93
27 .....	2.12
28 .....	2.32
29 .....	2.53
30 .....	2.76
31 .....	2.99
32 .....	3.24
33 .....	3.50
34 .....	3.77
35 .....	4.05
36 .....	4.35
37 .....	4.66
38 .....	4.98
39 .....	5.31
40 .....	5.66

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
41 .....	6.02
42 .....	6.39
43 .....	6.78
44 .....	7.18
45 .....	7.59
46 .....	8.02
47 .....	8.47
48 .....	8.92
49 .....	9.40
50 .....	9.88
51 .....	10.38
52 .....	10.90
53 .....	11.43
54 .....	11.98
55 .....	12.54
56 .....	13.12
57 .....	13.71
58 .....	14.32
59 .....	14.95
60 .....	15.59
61 .....	16.25

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
62 .....	16.92
63 .....	17.61
64 .....	18.32
65 .....	19.04
66 .....	19.78
67 .....	20.54
68 .....	21.32
69 .....	22.11
70 .....	22.92
71 .....	23.74
72 .....	24.59
73 .....	25.45
74 .....	26.33
75 .....	27.23
76 .....	28.15
77 .....	29.08
78 .....	30.04
79 .....	31.01
80 .....	32.00
81 .....	33.01
82 .....	34.04

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
83 .....	35.08
84 .....	36.15
85 .....	37.24
86 .....	38.34
87 .....	39.47
88 .....	40.61
89 .....	41.77
90 .....	42.96
91 .....	44.16
92 .....	45.38
93 .....	46.63
94 .....	47.89
95 .....	49.17
96 .....	50.48
97 .....	51.80
98 .....	53.15
99 .....	54.51
100 .....	55.90
101 .....	57.31
102 .....	58.74
103 .....	60.19
104 .....	61.66
105 .....	63.15
106 .....	64.67
107 .....	66.20
108 .....	67.76
109 .....	69.34
110 .....	70.94
111 .....	72.57
112 .....	74.21
113 .....	75.88
114 .....	77.57
115 .....	79.28
116 .....	81.02
117 .....	82.77
118 .....	84.55
119 .....	86.36
120 .....	88.18
121 .....	90.03
122 .....	91.90
123 .....	93.80
124 .....	95.72
125 .....	97.66
126 .....	99.62
127 .....	101.61
128 .....	103.62
129 .....	105.66
130 .....	107.72
131 .....	109.80
132 .....	111.91
133 .....	114.04
134 .....	116.20
135 .....	118.38
136 .....	120.58
137 .....	122.81
138 .....	125.06
139 .....	127.34
140 .....	129.64
141 .....	131.97
142 .....	134.32
143 .....	136.70
144 .....	139.10
145 .....	141.53
146 .....	143.98
147 .....	146.46
148 .....	148.96
149 .....	151.49

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
150 .....	154.05
151 .....	154.68
152 .....	155.31
153 .....	155.94
154 .....	156.57
155 .....	157.20
156 .....	157.83
157 .....	158.46
158 .....	159.10
159 .....	159.73
160 .....	160.36
161 .....	160.99
162 .....	161.62
163 .....	162.25
164 .....	162.88
165 .....	163.51
166 .....	164.14
167 .....	164.77
168 .....	165.41
169 .....	166.04
170 .....	166.67
171 .....	167.30
172 .....	167.93
173 .....	168.56
174 .....	169.19
175 .....	169.82
176 .....	170.45
177 .....	171.08
178 .....	171.72
179 .....	172.35
180 .....	172.98
181 .....	173.61
182 .....	174.24
183 .....	174.87
184 .....	175.50
185 .....	176.13
186 .....	176.76
187 .....	177.40
188 .....	178.03
189 .....	178.66
190 .....	179.29
191 .....	179.92
192 .....	180.55
193 .....	181.18
194 .....	181.81
195 .....	182.44
196 .....	183.07
197 .....	183.71
198 .....	184.34
199 .....	184.97
200 .....	185.60
201 .....	186.23
202 .....	186.86
203 .....	187.49
204 .....	188.12
205 .....	188.75
206 .....	189.38
207 .....	190.02
208 .....	190.65
209 .....	191.28
210 .....	191.91
211 .....	192.54
212 .....	193.17
213 .....	193.80
214 .....	194.43
215 .....	195.06
216 .....	195.69

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
217 .....	196.33
218 .....	196.96
219 .....	197.59
220 .....	198.22
221 .....	198.85
222 .....	199.48
223 .....	200.11
224 .....	200.74
225 .....	201.37
226 .....	202.01
227 .....	202.64
228 .....	203.27
229 .....	203.90
230 .....	204.53
231 .....	205.16
232 .....	205.79
233 .....	206.42
234 .....	207.05
235 .....	207.68
236 .....	208.32
237 .....	208.95
238 .....	209.58
239 .....	210.21
240 .....	210.84
241 .....	211.47
242 .....	212.10
243 .....	212.73
244 .....	213.36
245 .....	213.99
246 .....	214.63
247 .....	215.26
248 .....	215.89
249 .....	216.52
250 .....	217.15
251 .....	217.78
252 .....	218.41
253 .....	219.04
254 .....	219.67
255 .....	220.30
256 .....	220.94
257 .....	221.57
258 .....	222.20
259 .....	222.83
260 .....	223.46
261 .....	224.09
262 .....	224.72
263 .....	225.35
264 .....	225.98
265 .....	226.61
266 .....	227.25
267 .....	227.88
268 .....	228.51
269 .....	229.14
270 .....	229.77
271 .....	230.40
272 .....	231.03
273 .....	231.66
274 .....	232.29
275 .....	232.93
276 .....	233.56
277 .....	234.19
278 .....	234.82
279 .....	235.45
280 .....	236.08
281 .....	236.71
282 .....	237.34
283 .....	237.97

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
284 .....	238.60
285 .....	239.24
286 .....	239.87
287 .....	240.50
288 .....	241.13
289 .....	241.76
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

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

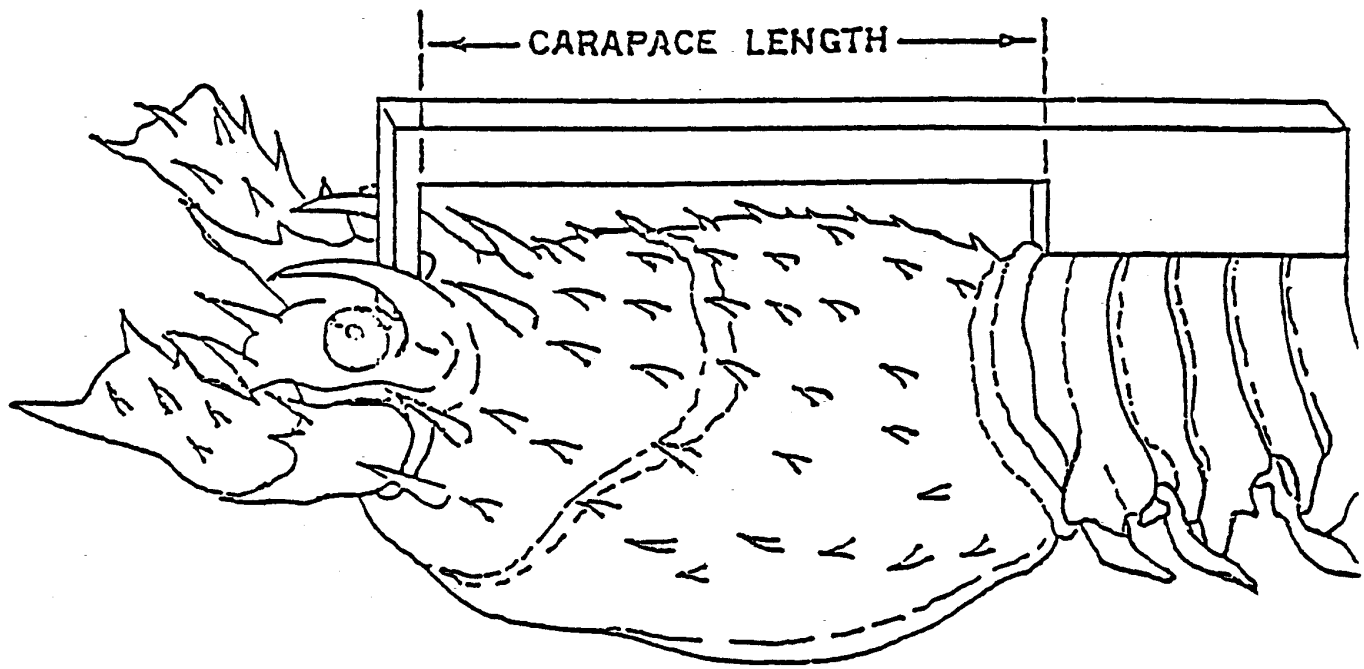
Vessel length	Capacity rating
324 .....	263.85
325 .....	264.48
326 .....	265.11
327 .....	265.74
328 .....	266.37
329 .....	267.00
330 .....	267.63
331 .....	268.26
332 .....	268.89
333 .....	269.52
334 .....	270.16
335 .....	270.79
336 .....	271.42
337 .....	272.05
338 .....	272.68
339 .....	273.31
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
363 .....	288.46

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
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

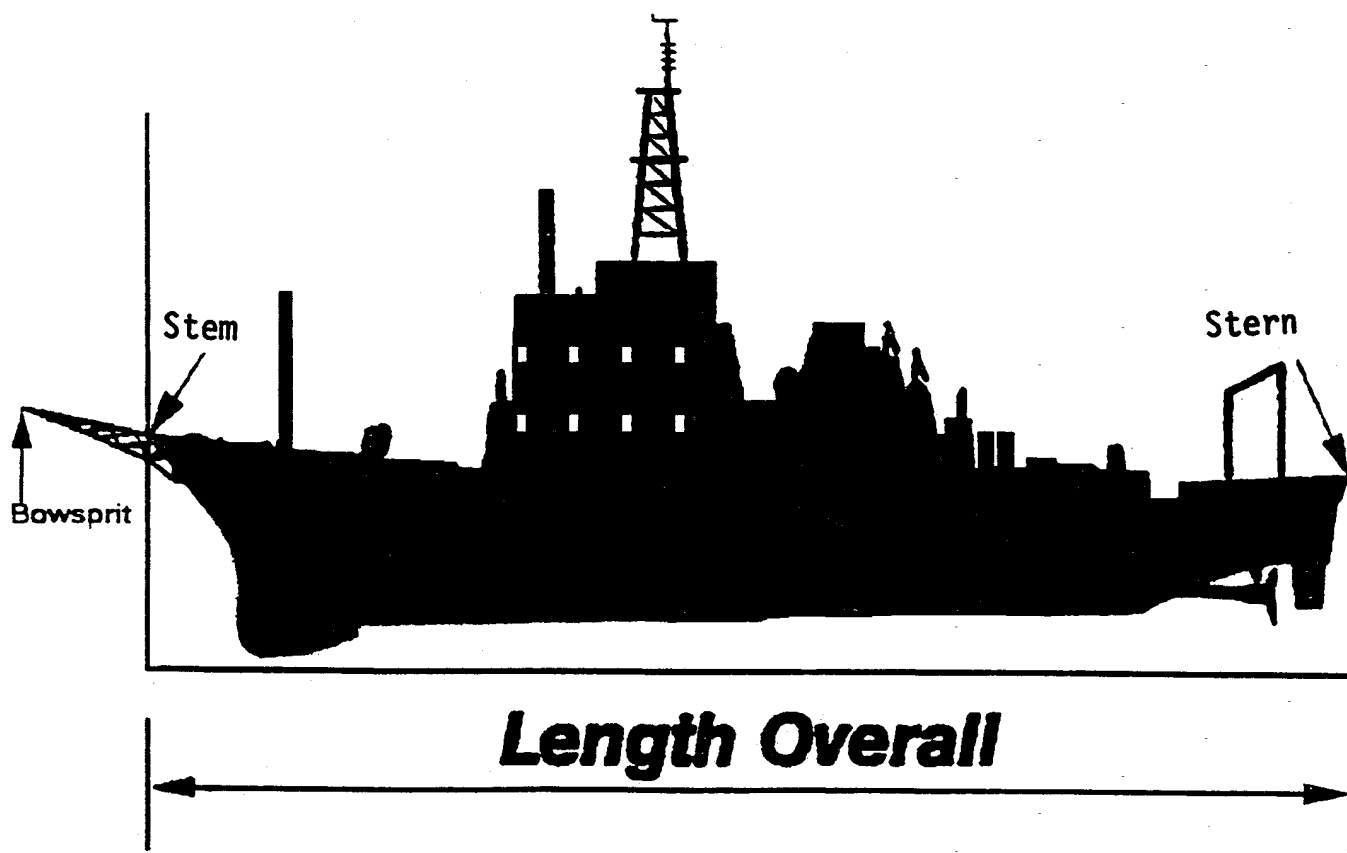
BILLING CODE 3510-22-P

Figure 1 to Part 660—Carapace Length of Lobsters



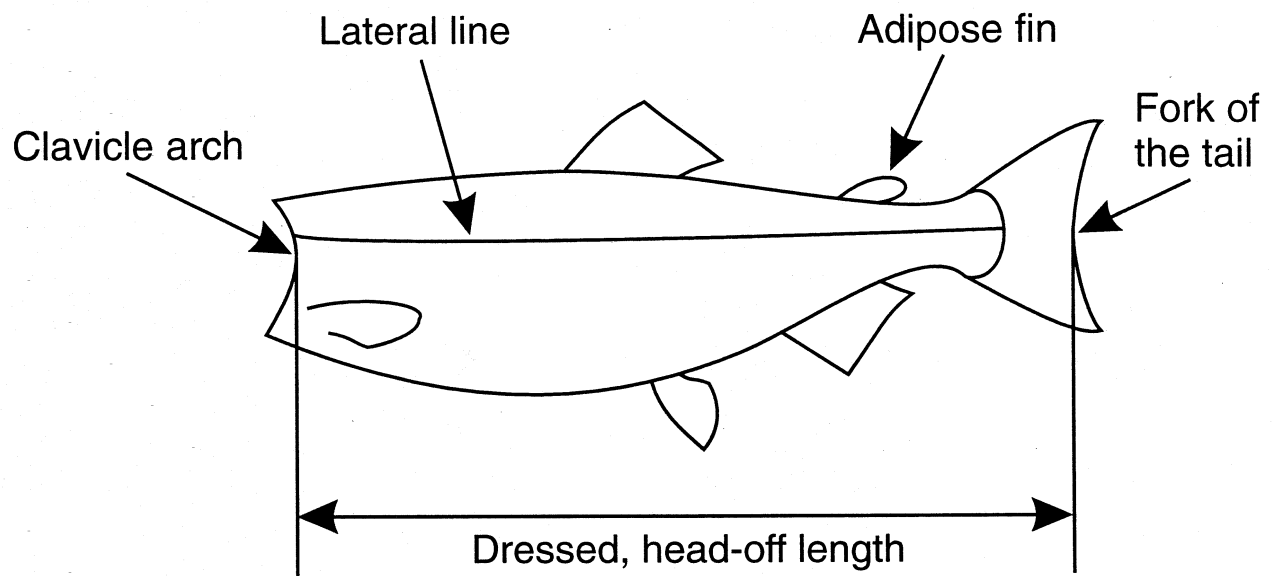
Carapace Length of Lobsters

Figure 2 to Part 660—Length of Longline Vessel



Length of Longline Vessel

Figure 3 to Part 660—Dressed, Head-off Length of Salmon



Dressed, Head-off Length of Salmon

**PARTS 661, 663, 680, 681, 683, and 685—[REMOVED]**

4. Under the authority of 16 U.S.C. 1801 *et seq.*, parts 661, 663, 680, 681, 683, and 685 are removed.

[FR Doc. 96-16234 Filed 7-1-96; 8:45 am]

BILLING CODE 3510-22-C