

## 50 CFR Part 685

[Docket No. 940245-4134; I.D. 012694F]

RIN 0648-AE35

**Pelagic Fisheries of the Western Pacific Region**

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

ACTION: Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 7 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). This rule establishes a limited entry program for the Hawaii longline fishery for pelagic species. The rule also includes broad framework procedures for more efficient administration of the fishery. The action is intended to improve the management of the longline fishery based in Hawaii to achieve optimum yield and prevent overfishing.

**EFFECTIVE DATE:** 0001 hours Hawaii time, June 24, 1994.

**ADDRESSES:** Copies of the combined Amendment 7/Final Environmental Impact Statement (FEIS)/Regulatory Flexibility Analysis (RFA) are available from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop Street, suite 1405, Honolulu, HI 96813. Send comments on the collection-of-information request to the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802-4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), ATTN: Paperwork Reduction Project 0648-0204 and 0648-0214, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, WPFMC, at (808) 541-1974; Svein Fougner, Southwest Region, NMFS, at (310) 980-4034; or Alvin Katekaru, Pacific Area Office, NMFS, at (808) 955-8831.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Western Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce (Secretary) at a time when there were few problems in the domestic fisheries for management unit species (billfish and associated species) and the Hawaii longline fishery consisted of less than 40 relatively small vessels fishing primarily near the Hawaiian Islands. Conditions are now very different. The longline fishery based in Hawaii now consists of 167 vessels up to 101 ft (30.8 m) in length and targets swordfish, tuna, and other

management unit species. Vessels often travel up to 2,000 miles (3,219 km) from port.

Due to the rapid growth of this fishery, concern was raised about the potential and actual impact of the expanded fishery on the status of some fish stocks, the impact of increased longline catches on other fisheries, and interactions between longline fishing and protected species such as Hawaiian monk seals and sea turtles. This led to establishment in April 1991 of a 3-year moratorium on new entry to the Hawaii longline fishery. Amendment 7 to the FMP establishes a new limited entry program for the Hawaii-based longline fishery.

The limited entry program requires permits that will be freely transferable. Permit owners may upgrade their vessels or transfer their permits for registration with other vessels provided the newly designated vessel is no longer than 101 ft (30.8 m) in length as measured in accordance with the rule. Initial permit issuance decisions are made by the Fisheries Management Division, Southwest Region, NMFS. The program includes provision for appeals of permit decisions to the Regional Director, Southwest Region, NMFS (Regional Director). The rule includes broad framework procedures for subsequent adjustment of the conservation and management measures for the pelagics fisheries to provide for more efficient administration of the fisheries. Three species of fish are added to the management unit. The rule also makes several technical changes to the regulations.

A proposed rule to implement Amendment 7 to the FMP was published in the Federal Register on February 24, 1994 (59 FR 9050). The proposed rule (1) described in detail the concerns being addressed by the Council and actions taken by the Council and Secretary to address those concerns, (2) summarized the measures proposed in Amendment 7 and the objectives of the amendment, and (3) indicated the reasons for other regulatory changes proposed. Those discussions will not be repeated here. After consideration of public comment on the Amendment and the proposed rule, Amendment 7 was approved; this final rule implements that amendment.

This rule is consistent with the Administrative Procedure Act (5 U.S.C. 553), which requires that final rules be published not less than 30 days before they become effective. In the period between publication of the final rule and the effective date, NMFS will advise moratorium permit holders of the need to submit applications and supporting

information in a timely manner so that new limited entry permits can be issued by the effective date of this rule.

**Comments and Responses**

Comments were received from, or on behalf of, 46 fishery participants, workers in support industries, and other interested parties. Most (40) favored approval of the amendment and the proposed rule. Four commenters recommended disapproval or partial disapproval of the amendment. Two commenters submitted technical comments concerning the language of the permit eligibility criteria. In the proposed rule, NMFS specifically invited comment on the adequacy of the proposed rule and complementary actions taken by the Council and NMFS to ensure that the take of sea turtles in the longline fishery would not be excessive. One set of comments was received in response. Summaries of comments and NMFS responses are provided below.

**Comments (1):** Comments favoring the amendment were received from 40 people. Most of these were on petitions from workers in the longline fishery or support industries. The signers supported Amendment 7 because they felt it would provide stability, promote conservation, and provide vessel owners with flexibility needed to make sound business decisions. In addition, separate letters were received from seven permit holders supporting the amendment. They felt it would prevent overfishing and adverse impacts on other fisheries, would provide needed flexibility to vessel owners to make business decisions, and would maintain substantial economic benefits to the fishery participants and support industries. All commenters supporting the Amendment noted that existing area closures would be retained so that there should be no adverse effects on other fisheries.

**Response (1):** None needed. Amendment 7 has been approved and is being implemented by this final rule.

**Comment (2):** One individual (an owner of several of the larger longline vessels with permits) recommended that the amendment be disapproved because the fishery is already showing signs of economic difficulty, with longer trips, smaller fish, and less profit. In the commenter's view, allowing further vessel upgrades would exacerbate the economic difficulties. The amendment also was criticized for allowing upgrading of smaller vessels while prohibiting upgrading of larger vessels.

**Response (2):** The available data do not indicate any economic or biological problems in the fishery. The

Amendment indicates that the average sizes of most species of fish landed have held relatively steady since 1987, and the average size of swordfish has increased since 1987. Aside from this commenter, no other participants in the fishery have indicated that their catches or profits have declined, except for fishermen who were effectively precluded from fishing traditional grounds by the area closures imposed around the main Hawaiian Islands. There is no indication that catch rates have decreased due to excessive fishing pressure. The Council and NMFS acknowledge that the expanded longline fishery has been operating for only a few years and that many interested parties have expressed concern about possible long-term impacts on the stocks or other fisheries and protected species. Therefore, the Council has proposed an approach to allow a limited increase in the fishery with greater flexibility for fishermen to make business decisions. Controlled expansion of the fishery will provide a basis for determining whether the expanded fishery is affecting fish stocks or fishery participants and whether corrective action is needed. If information later indicates problems, the amendment includes framework procedures to address those problems. Allowing upgrading of smaller vessels is intended to provide a fair competitive opportunity within the longline fishery for owners of small vessels that were effectively precluded from fishing when the longline area closures went into effect. It is not expected that all participants will acquire larger vessels to the maximum size permitted, though some shift to larger vessels is expected. Finally, disapproval of the amendment would result in no limit on participation. No change was made to the rule in response to these comments.

*Comment (3):* One environmental conservation organization commented in opposition to the amendment. This organization indicated the moratorium on new entry should be continued until data are available from the longline observer program and other sources to assess impacts on sea turtles and the status of fish stocks harvested by the longline fishery. This organization felt that the allowable incidental take of sea turtles is excessive and was concerned that the amendment would result in additional effort and thus a risk of higher turtle takes and jeopardy to turtle stocks. The commenter also was critical of the low level of coverage achieved in the voluntary program.

*Response (3):* The moratorium terminated at 12 midnight on April 22, 1994. If the amendment had been disapproved, there would no longer

have been any limitation on the number or size of longline vessels in the fishery. The moratorium may not be continued unless the Secretary rejects the amendment and issues regulations under the Secretary's amendment authority. In the Secretary's view, the framework procedures of Amendment 7 allow relatively quick action to adjust management measures if needed to protect sea turtles or fish stocks.

A mandatory observer program was established by an interim final rule published on December 22, 1993 (58 FR 67699). By April 10, 1994, 14 completed trips had been observed. This represents a significant increase in observer coverage over the voluntary program. Consultations under section 7 of the Endangered Species Act (ESA) have been reinitiated and will consider data from the voluntary and mandatory observer programs, and information on the status and trends of turtle populations, to determine whether new conservation recommendations or reasonable and prudent measures should be applied in this fishery.

With respect to the impacts of the fishery on fish stocks, the available data indicate that no stocks have been affected by the longline fishery to date. No changes have been made in the regulations in response to these comments.

*Comment (4):* Two other commenters recommended partial disapproval of the amendment. Both favored limited entry for the longline fishery, but also favored limiting harvesting capacity of the fleet by only allowing vessel upgrades for safety, and not providing permits to those who did not fish in the moratorium. One emphasized the incomplete and dated nature of much of the data used and criticized the management system and fishery for the waste of sharks, noting that only a very small portion of the shark catch is retained; this commenter also suggested a quota system could be developed. The other commenter proposed that, if vessel upgrades are allowed, gear upgrades should be limited. A harvesting capacity quota approach should be developed in a three-tier (small, medium, and large) vessel system. This commenter feared that longliners could decimate stocks and then move to new areas, leaving local fishermen to pay the price. Both commenters also suggested that some Council members who worked on the amendment had financial conflicts of interest.

*Response (4):* Many elements of the amendment already comport with the commenters' recommendations; for example, the maximum number of

permits may be no more than the number in the moratorium, and permits will not be issued to persons who did not fish (excluding small vessels and persons who obtained longline permits due to linkage with lobster permits) during the moratorium. However, the Council chose to allow more flexibility for vessel upgrades to equalize the opportunity for all vessel owners to compete in the fishery. The best scientific information available has been used. The Council and NMFS acknowledged the limitations of the data. The amendment includes framework procedures so management adjustments can be made rapidly if the data indicate a need for changes. The Council chose not to recommend a quota system, given the inadequacy of data to determine allowable catch and allocations to different fishermen. The Council considered gear limitations but recognized the serious difficulty in enforcing such limitations due to limited at-sea enforcement resources.

Issues of discards and bycatch have been raised to the Council, and the Council will review the data collected under the mandatory observer program to determine how to address these issues in the future. The Council considered establishment of a harvesting capacity management system and concluded that a fair and effective system would require much additional data collection and analysis. The Council agreed to continue work on alternate means to control effort and capacity for implementation through the framework procedures in the amendment.

Regarding conflict of interest, the Magnuson Fishery Conservation and Management Act (Magnuson Act) permits Council members with financial interests in harvesting, marketing, or processing activities to vote on matters that affect those interests, if disclosed publicly in accordance with regulations governing Regional Fishery Management Councils at 50 CFR part 601. No changes were made in the regulations in response to these comments.

*Comment (5):* One commenter indicated that the regulations need to be modified to accommodate people who may still have longline permit applications pending under the moratorium.

*Response (5):* There were no permit applications pending when the moratorium ended, therefore no change was necessary in the regulations to respond to this comment.

*Comment (6):* The Council indicated that the language of the permit eligibility criteria concerning the

linkage between longline permits and northwestern Hawaiian Islands (NWHI) lobster limited entry permits needed revision to be consistent with the intent of the Council. That is, the criteria in the proposed rule would not have afforded eligibility for a Hawaii longline limited entry permit to someone who, at the end of the moratorium, was the last holder of record of a moratorium longline limited entry permit and held a northwest Hawaiian Islands (NWHI) lobster limited entry permit, both of which were obtained from another party. It was the Council's intent that a person who obtained both permits from another party would thus be eligible for a Hawaii longline limited entry permit based on "the lobster fishery criterion" referred to in Amendment 7.

*Response (6):* A new paragraph § 685.9(b)(2)(iv) has been added to be consistent with the Council's intent. It is estimated that five longline permit holders will be affected by this change by qualifying for new permits under these criteria.

#### Changes from the Proposed Rule

An item inadvertently not discussed in the proposed rule is that initial permit decisions are made by the Chief, Fisheries Management Division, Southwest Region, NMFS. This final rule includes a provision for appeals of permit decisions to the Regional Director. Experience in the moratorium program indicates a need for an appeal process to review decisions that applicants believe are incorrect or based on faulty interpretation of facts.

The definition of "length overall" of a vessel has been revised to mean only the horizontal distance between the foremost part of the stem and the aftermost part of the stern. The length overall does not include fittings or attachments that extend beyond these two points, including bowsprits, rudders, or outboard motor brackets. References in the proposed definition to other vessel length measurements appearing in U.S. Coast Guard or state vessel registration documents have been removed because they could have resulted in the use of different vessel length measurement systems. As revised, the definition provides a consistent and uniform method of determining vessel length for all vessels participating in the fishery; it is the same method of length measurement used in many other federally regulated fisheries. Under this definition, the longest vessel active in the fishery in the moratorium is 101 feet (30.8 m) rather than 93 feet (28 meters), as described in the preamble to the proposed rule.

The eligibility criteria for issuance of a Hawaii limited entry permit in § 685.9(b)(2) were modified. As noted in response to comment Number 6 the linkage between longline permits and NWHI lobster limited entry permits was modified to be consistent with Council intent. Also, several moratorium permits were invalidated due to the sinking or destruction of vessels. The holders of these permits had been active during the moratorium period and therefore would qualify for permits under the new program. By focussing on the last holder of record of limited entry permits issued under the moratorium, the final rule provides that these individuals will qualify for new permits, consistent with the intent of Amendment 7.

A prohibition (§ 685.9(a)(4)) was added to require that necessary permits be on board vessels and available for inspection by an authorized agent unless the vessel was at sea when the permit was issued, in which case the permit must be on board the vessel on the next trip. The requirement for the permit to be on board the vessel was in effect during the moratorium, but was inadvertently omitted from the proposed rule.

A deadline for applications for initial Hawaii longline limited entry permits has been set in § 685.9(c) to ensure that the number of permits will be limited after a given period of time. Applications must be submitted within 120 days after the date of publication in the Federal Register. The Council will be considering changes in allowable participation and effort in the future and needs to know the size of the permitted fleet in order to evaluate the benefits and costs of changes in regulations.

A change was made to the observer program (§ 685.11) to refer to Hawaii longline limited entry permit requirements (§ 685.9(a)(2)), so that the notification requirements of § 685.11 will apply to owners of vessels with such permits.

Technical changes were made in the designation of sections and paragraphs due to the expiration of provisions implemented under the moratorium on new entry to the longline fishery.

#### Classification

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

The Council prepared a combined final FMP amendment/Final Environmental Impact Statement (EIS)/Regulatory Flexibility Analysis (RFA) covering the impacts of the fishery as managed under this amendment and alternative approaches. The final FMP amendment/final EIS satisfies National

Environmental Policy Act requirements for documentation and analysis of the impacts of the fishery on the environment.

A consultation under section 7 of the Endangered Species Act (ESA) was conducted and NMFS issued a Biological Opinion (Opinion) and Incidental Take Statement (Statement) in June 1993 concerning the take of sea turtles in the longline fishery. Consultations have been reinitiated and a new Biological Opinion is being prepared. A new consultation to address Amendment 7 is not necessary.

This rule is expected to have a significant economic impact on a substantial number of small entities. Hawaii longline vessel owners (approximately 167) will have more flexibility to buy and sell vessels and permits and to upgrade their fishing vessels to compete more effectively in the domestic longline fishery, as well as with foreign fleets. It is estimated that total revenue from longline landings will increase to \$60 million per year from about \$45 million in 1992. The final amendment/FEIS includes an RFA that is adopted as final without change.

This rule includes a change in an information collection previously approved by the Office of Management and Budget (OMB No. 0648-0204). The change is included in a request submitted by the Southwest Region, NMFS, for approval of modification and extension of the current collection that covers all Southwest Region fishery permit programs. The change requires prospective participants in the Hawaii longline fishery to submit permit application forms and supporting information, including a current Certificate of Documentation from the U.S. Coast Guard, to obtain or transfer a permit under the new limited entry program. Landings records from the existing Hawaii longline logbook reporting requirement will be used to determine whether an individual has met the landings requirement to qualify for a permit. The estimated burden on the applicants is 30 minutes per application. This is less than the average of 1 hour or more that had been required for applications for permits in the moratorium period, because the moratorium applications required documentation of intent to enter the longline fishery at a time when investment decisions were made. The documentation requirements under the new permit program will be simpler.

This rule also restates requirements for the submission of logbooks and post-landing notifications. These requirements have already been approved by OMB under Control

Number 0648-0214. The response times for these requirements were estimated to be 5 minutes per day for the logbook and 5 minutes per notification. Send comments regarding these burden estimates or any other aspect of these collection-of-information requirements, including suggestions for reducing burden, to the Director of the Southwest Region, NMFS, and to OMB (see ADDRESSES).

**List of Subjects in 50 CFR Part 685**

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands.

Dated: May 17, 1994.

Charles Karnella,

Acting Program Management Officer,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended to read as follows:

**PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION**

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.2, the definition of "Pacific pelagic management unit species" is amended by adding three new entries alphabetically to the list of species; the definition of "protected species zone" is amended by revising the last sentence of the definition; and new definitions of "Council", "Fisheries Management Division (FMD)", "Hawaii longline limited entry permit", "length overall or length", "longline fishing vessel", "longline general permit", "moratorium", "receiving vessel", and "receiving vessel permit" are added in alphabetical order, to read as follows:

**§ 685.2 Definitions.**

*Council* means the Western Pacific Regional Fishery Management Council established under section 302 of the Magnuson Act.

*Fisheries Management Division (FMD)* means the Chief, Fisheries Management Division, Southwest Regional Office, National Marine Fisheries Service, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802, or a designee.

*Hawaii longline limited entry permit* means the permit required by § 685.9(a)(2) 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.

*Length overall or length of a vessel* means the horizontal distance, rounded to the nearest foot (with 0.5 feet 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 1 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.

*Longline fishing vessel* means a vessel that has longline gear on board the vessel.

*Longline general permit* means the permit required by § 685.9(a)(1) 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.

*Moratorium* means the moratorium on new entry into the Hawaii longline fishery that was in effect from April 23, 1991, through April 22, 1994.

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

Common name	Scientific name
Moonfish (or opah)	<i>Lampris</i> spp.
Oilfish (or walu) ..	Family Gempylidae
Pomfret .....	Family Bramidae

*Protected species zone* means \* \* \* Parallel lines tangent to and connecting those 50-nautical mile areas around Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, Laysan Island and Lisianski Island, and Lisianski Island and Pearl and Hermes Reef, delimit the remainder of the protected species zone.

*Receiving vessel* means a vessel of the United States that has longline-caught Pacific pelagic management unit species, but does not have longline fishing gear, on board the vessel.

*Receiving vessel permit* means a permit required by § 685.9(a)(3) for a receiving vessel to transship or land Pacific pelagic management unit species taken by other vessels using longline gear.

3. In § 685.4, paragraph (b) introductory text is revised to read as follows:

**§ 685.4 Recordkeeping and reporting.**

(b) The operator of any longline fishing vessel subject to § 685.9(a)(1) or (2) must maintain on board the vessel an accurate and complete fishing logbook for each day of each fishing trip, which must include the following information:

4. In § 685.5, paragraphs (e) through (h) are revised; paragraphs (r) through (x) are redesignated as paragraphs (n) through (t), respectively; and paragraphs (u), (v), (w), (x), (y), and (z) are added to read as follows:

**§ 685.5 Prohibitions.**

(e) Use a longline vessel without a valid longline general permit or a Hawaii longline limited entry 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.

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

(g) 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.

(h) Transfer a permit in violation of § 685.9(j).

(u) Refuse to make available to an authorized agent for inspection or copying any records that must be made available under § 685.17.

(v) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited entry 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.

(w) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited entry 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.

(x) Enter the EEZ around Hawaii with longline gear that is not stowed or secured in accordance with § 685.25, if operating a U.S. vessel without a valid Hawaii longline limited entry permit registered for use with that vessel.

(y) 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 § 685.25, if operating a U.S. vessel without a valid Hawaii longline limited entry permit registered for use with that vessel or a longline general permit registered for use with that vessel.

(z) Fail to have on board the vessel and available for inspection by an authorized agent any permit required under § 685.9 unless the vessel was at sea when the permit was issued, in which case the permit must be on board the vessel before its next trip.

5. Section 685.9 is revised to read as follows:

#### § 685.9 Permits.

(a) *Permit requirements.* (1) A fishing vessel of the United States must be registered for use under a Hawaii longline limited entry permit or a longline general permit if that vessel:

(i) Is used 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

(ii) Is used 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.

(2) A fishing vessel of the United States must be registered for use under a Hawaii longline limited entry permit if that vessel:

(i) Is used to fish for Pacific pelagic management unit species using longline gear in the EEZ around Hawaii; or

(ii) Is used 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.

(3) 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.

(4) 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.

(5) 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.

(b) *Eligibility for initial permits.* (1) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued a longline general permit under paragraph (a)(1) of this section or a receiving vessel permit under paragraph (a)(3) of this section.

(2) Any person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) is eligible for initial issuance of a Hawaii limited entry permit under paragraph (a)(2) of this section, provided that person:

(i) Was the last holder of record of a limited entry permit issued under this part during the moratorium, and owns or owned a vessel that landed longline-caught management unit species in Hawaii at least once during the moratorium; or

(ii) Was the last holder of record of a limited entry permit issued under this part during the moratorium for a vessel that is less than 40 ft (12 m) in length; or

(iii) Was the last holder of record of a limited entry permit issued under this part during the moratorium, which was issued to that person because he or she was eligible for a permit under 50 CFR 681.30 for the Northwestern Hawaiian Islands lobster fishery; or

(iv) Was the last holder of record of a limited entry permit issued under this part during the moratorium and owned a permit issued under 50 CFR 681.30 for the Northwestern Hawaiian Islands lobster fishery.

(c) *Application.* (1) An application for a permit under this section must be submitted on a Southwest Region Federal Fisheries Application form obtained from the Pacific Area Office, containing all the necessary

information, attachments, certification, signatures, and fees. In no case will oral or telephone applications be accepted.

(2) A vessel owner must submit an application for a permit to the Pacific Area Office at least 15 days before the desired effective date of the permit. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) An application is complete when all required information, attachments, certifications, signatures, and fees have been received.

(4) Applications for initial permits under paragraph (a)(2) of this section must be submitted on or before September 21, 1994.

(d) *Change in application information.* Any change in information on the permit application form submitted under paragraph (c) of this section must be reported to the Pacific Area Office at least 10 days before the effective date of the change. Failure to report such changes will result in invalidation of the permit.

(e) *Issuance.* After receiving a complete application, the FMD will issue a permit to an applicant eligible for a permit under this section.

(f) *Fees.* A fee is charged for each application for a Hawaii longline limited entry permit (including initial permits, permit transfers, and permit renewals). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of a limited entry permit.

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

(h) *Renewal.* An application for renewal of any permit issued under this section must be submitted to the Pacific Area Office as described in paragraph (c) of this section.

(i) *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.

(j) *Transfer.* (1) The owner of a Hawaii longline limited entry permit may apply to transfer the permit:

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

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

(2) An application for a permit transfer must be submitted to the Pacific Area Office as described in paragraph (c) of this section.

(k) A Hawaii longline limited entry permit will not be registered for use with a vessel that has a length overall that is longer than 101 ft (30.8 m).

(l) 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.

**§ 685.11 [Amended]**

6. In § 685.11(a), substitute “§ 685.9(a)(2)” for “§ 685.9”.

7. Section 685.13 is revised to read as follows:

**§ 685.13 Notification of landings and transshipments.**

The operator of a longline fishing vessel subject to the permit requirements of § 685.9(a) of this part must contact the Pacific Area Office by telephone, at a number provided to permit holders, within 12 hours of the vessel's arrival at any port in Hawaii, Guam, American Samoa, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area, and report the name of the vessel, name of the vessel's operator, and the date and time of each landing or transshipment of Pacific pelagic management unit species by the vessel since its previous report of landing and/or transshipment.

8. Section 685.15 is revised to read as follows:

**§ 685.15 Permit appeals.**

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

(b) 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 Plan for Pelagic Fisheries of the Western Pacific Region, 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 (c) 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.

(c) 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.

(d) 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 Administrative Procedure Act.

(e) 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 or her own motion or upon written request from the appellant stating the reason(s) therefor.

9. Section 685.17 is revised to read as follows:

**§ 685.17 Availability of records for inspection.**

Any fish dealer shall provide an authorized officer access for inspecting and copying all records of fish purchases, sales, or other transactions involving fish taken or handled by vessels that have permits issued under this part or that are otherwise subject to

this part, including, but not limited to, information concerning:

(a) The name of the vessel involved in each transaction and the owner or operator of the vessel;

(b) The amount, number, and size of each species of fish involved in each transaction; and

(c) The price(s) paid by the buyer and proceeds to the seller in each transaction.

10. Section 685.18 is added to subpart A to read as follows:

**§ 685.18 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 the fishery. The following framework process allows for measures that may affect operation of the fisheries, gear restrictions, quotas, or reductions or increases in longline catch and/or effort, if the information supports such a change. Additional information may indicate the need for new management measures for other sectors of the fishery, such as harvest guidelines, permits for certain classes of vessels, or reporting requirements.

(b) *Annual report—(1) Assessment of the fisheries.* By June 30 of each year, the Council-appointed Pelagics Plan Team will prepare an annual report on fisheries in the fishery management area, containing the following:

(i) Fishery performance data (e.g., landings, effort, value of landings, species composition);

(ii) Summary of recent research and survey results;

(iii) Habitat conditions and recent alterations;

(iv) Enforcement activities and problems;

(v) Administrative action (e.g., data collection and reporting, permits);

(vi) State and territorial management actions; and

(vii) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by indicator criteria. These criteria could include, but are not limited to, important changes in: Mean size of the catch of any species; estimated ratio of fishing mortality to natural mortality for any species; decline in catch per unit effort by any sector; ex-vessel revenue of any sector; relative proportions of gear in and around the EEZ; rate of entry/exit of fishermen in the fisheries; revenues for a significant percentage of any



sector; total pelagic landings; species composition of the pelagic landings; research results; habitat or environmental conditions; or level of interactions between pelagic fishing operations and protected species in the EEZ or surrounding waters:

(viii) Recommendations for Council action; and

(ix) Estimated impacts of the recommended action.

(2) *Recommendations for management action.* The annual report shall specify any recommendations made by the Pelagics Plan Team to the Council. 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 and will indicate whether changes involve existing measures, which may be changed under paragraph (c) of this section, or new measures, which may be implemented under paragraph (d) of this section.

(c) *Procedure for changing established measures.* (1) Established measures are those that are or have been in place via rulemaking procedures for various sectors of the fisheries, including, but not limited to, requirements governing: Longline general permits; Hawaii longline limited entry permits; longline logbooks and other reporting requirements; longline area closures; and longline gear marking requirements. The estimated and potential impacts of these measures have been evaluated in past Fishery Management Plan amendments and associated documents.

(2) The Council will identify problems that may warrant action through the annual report described in paragraph (b)(1) of this section, or a separate report from the Pelagics Plan Team, the Advisory Subpanel, Pelagics Review Board, Scientific and Statistical Committee, pelagic fishery sector, enforcement officials, NMFS, or other sources. Identified problems will be addressed as follows:

(i) At a Council Meeting following completion or receipt of a report identifying a problem, the Council will discuss whether changes to established conservation and management measures would resolve the problem. Notice to the public and news media preceding the meeting will indicate that the Council intends to discuss and possibly recommend regulatory adjustments through the framework process for established measures to address the issue or problem. The notice must summarize the issue(s) and the basis for recommending the measures being

reviewed and would refer interested parties to the document(s) pertaining to the issue.

(ii) Based on discussions at the meeting, which could include participation by the Pelagics Plan Team, Advisory Subpanel, Pelagics Review Board, Scientific and Statistical Committee, or other Council organizations, the Council will decide whether to recommend action by the Regional Director.

(iii) The Regional Director will be asked to indicate any special concerns or objections to the possible actions being considered under the framework process and, if there are any concerns or objections, will be asked for ways to resolve them.

(3) If the Council decides to proceed, a document will be prepared describing the problem and the proposed regulatory adjustment to resolve it. The document will demonstrate how the adjustment is consistent with the purposes of the established measure and that the impacts had been addressed in the document supporting the original imposition of the measure. The document will be submitted to the Regional Director with a recommendation for action. The Council may indicate its intent that the recommendations are to be approved or disapproved as a single action.

(4) If the Regional Director approves part or all of the Council's recommendation, the Secretary, in accordance with the Administrative Procedure Act, may implement the approved change in an established measure by publishing a final rule, waiving advance notice and comment. This does not preclude the Secretary from deciding to provide additional opportunity for advance notice and comment, but contemplates that the Council process will satisfy the requirements of the Magnuson Act and Administrative Procedure Act regarding prior notice and comment. Established measures are measures that have been evaluated and applied in the past, and adjustments under this framework must be consistent with the original intent of the measure and within the scope of analysis in previous documents supporting the existing measure.

(5) Nothing in this section limits the authority of the Secretary to take emergency action under section 305(c) of the Magnuson Act.

(d) *Procedure for implementing new measures.* (1) New measures are those that have not been used before or measures that, while previously applied, would be applied to another fishing sector (e.g., non-longline pelagic fishery) or gear type for the first time.

New measures may have been previously considered in a past FMP amendment or document, but the specific impacts on the persons to whom the measures would newly apply have not been evaluated in the context of current conditions. Potential new measures include, but are not limited to: Permit requirements for new fishery sectors; reporting requirements for a fishery sector other than longline fishing; effort limitations; quotas (for total catch or by species), including individual transferable quotas; fractional licensing; or bycatch limits.

(2) A Pelagics Plan Team report (annual report or an in-season report), input from advisors, or input from NMFS or other agencies will first bring attention to a problem or issue that needs to be addressed at the next Council meeting. In its notice announcing the meeting, the Council will summarize the concern or issue raised, the party that has raised the problem, and the extent to which it is a new problem or a problem that may require new management measures. The Council will seek to identify all interested persons and organizations and solicit their involvement in discussion and resolution of this problem through the Council process, and the Council meeting notice in the Federal Register will emphasize that this problem will be discussed and that proposed actions may result.

(3) The document presenting the problem to the attention of the Council will be distributed to all advisory bodies of the Council who have not yet received it, with a request for comments. The document also will be distributed to the Council's mailing list associated with the Fishery Management Plan to solicit comments and to indicate the Council will take up action at the following meeting. The Council's chairperson may request the Council's Pelagics Standing Committee to discuss the issue and review the comments (if any) of the Pelagics Plan Team, Advisory Panel, Pelagics Review Board, or Scientific and Statistical Committee, and develop recommendations for Council action.

(4) At the meeting, the Council will consider the recommendations of its Pelagics Standing Committee, if any, and other Council organizations and will take comments from the public concerning the possible course of action. If the Council agrees to proceed with further action under the framework process, the issue will be placed on the agenda for the following meeting. A document describing the issue, alternative ways to resolve the issue, the preferred action, and the anticipated

impacts of the preferred action, will be prepared and distributed to the public with a request for comments. A notice will be published in the Federal Register summarizing the Council's deliberations and preferred action and indicating the time and place for the Council meeting to take final action.

(5) In its notice for the following meeting, the Council will indicate that it may take final action on the possible adjustment to regulations under this section. At the meeting, the Council will consider the comments received as a result of its solicitation of comments and take public comments during the meeting on the issue or problem. The Council will consider any new information presented or collected and analyzed during the comment period. The Regional Director will be provided a specific opportunity to indicate any objections or concerns about any or all components of the measures being considered. The Council will then decide whether to recommend a new measure or measures under this section.

(6) If the Council decides to proceed, it will submit its proposal to the Regional Director for consideration, with supporting rationale and an analysis of the estimated biological, economic, and social impacts of the proposed actions. The Council may indicate its intent that all components of its recommendations be approved or disapproved as a single action.

(7) If the Regional Director concurs in whole or in part, the Secretary, in

accordance with the Administrative Procedure Act, may implement the approved new measure by publishing a final rule, waiving advance notice and comment. Nothing in this procedure is intended to preclude the Secretary from deciding to provide additional opportunity for advance notice and comment in the Federal Register, but contemplates, that the Council process (which includes two Council meetings with opportunity for public comment at each) will satisfy that requirement.

(8) If a new action is approved and implemented, future adjustments may be made under the procedure for established measures.

(9) Nothing in this section limits the authority of the Secretary to take emergency action under section 305(c) of the Magnuson Act.

**§ 685.23 [Removed]**

**§§ 685.24-685.26 [Redesignated as §§ 685.23-685.25]**

11. Section 685.23 is removed and §§ 685.24, 685.25, and 685.26 are redesignated §§ 685.23, 685.24, and 685.25, respectively.

12. In newly redesignated § 685.24, paragraph (a)(1) and paragraph (f) introductory text are revised to read as follows:

**§ 685.24 Exemptions for longline fishing prohibited areas; procedures.**

(a) \* \* \*

(1) Currently owns a Hawaii longline limited entry permit issued under this

part and registered for use with his or her vessel;

\* \* \* \* \*

(f) The Council will consider information provided by persons with Hawaii longline limited entry 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.

\* \* \* \* \*

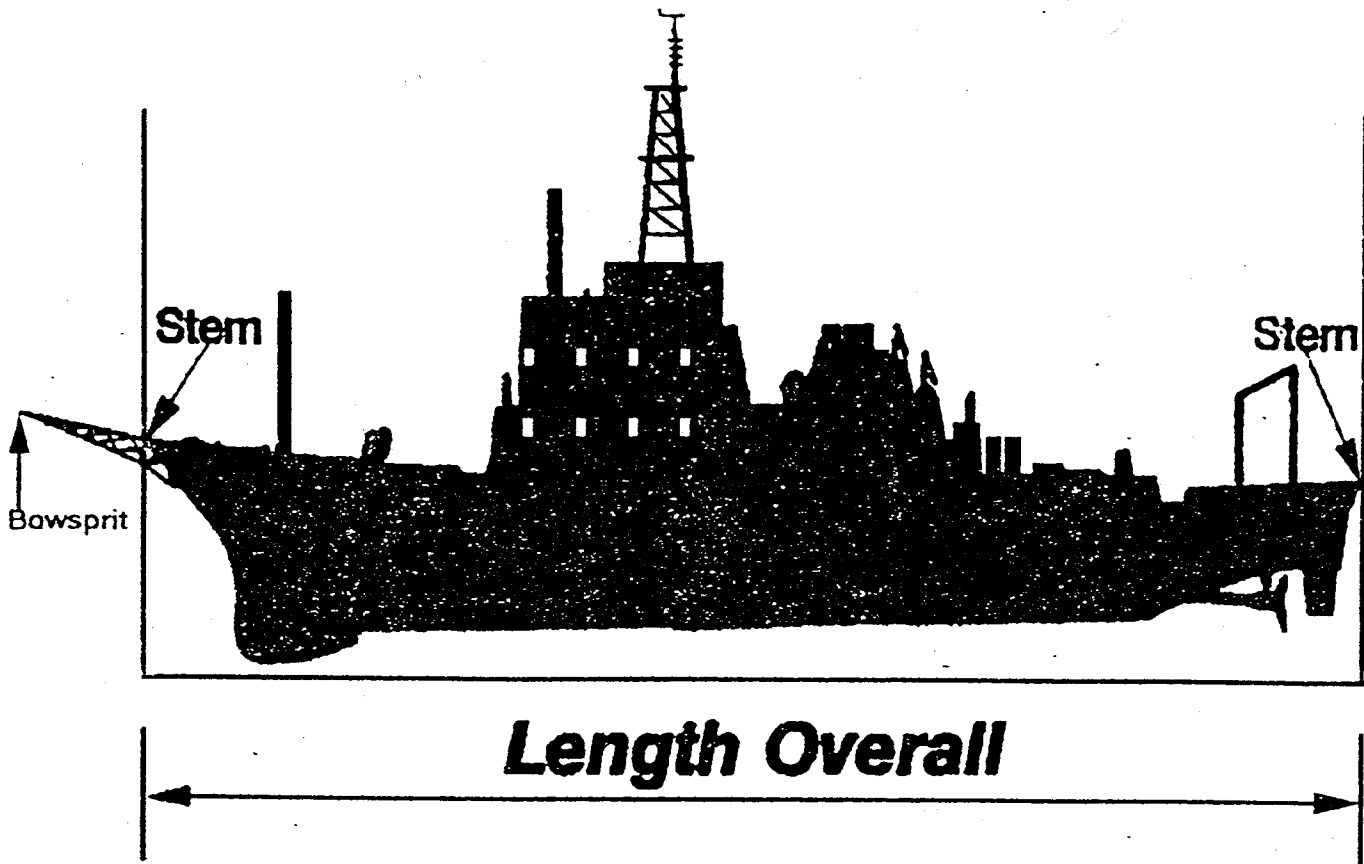
13. Newly redesignated § 685.25 is revised to read as follows:

**§ 685.25 Port privileges and transiting for unpermitted longline vessels.**

A U.S. longline fishing vessel that does not have a permit under § 685.9(a) (1) or (2) 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.

14. Figure 1 is added to part 685 to read as follows:





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**Length Overall**—the horizontal distance, rounded to the nearest foot (with 0.5 feet 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.

**Stem**—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**—the aftermost part of the vessel.

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