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owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part for qualifying for, or renewing, limited access permits. In making such decision, the Administrator will review relevant portions of the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, to the extent such review would clarify the criteria in this part. Such decision will be based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (n)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

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

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hearing, the hearing officer shall recommend, in writing, a decision to the Regional Administrator.

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

(4) In the case of a timely appeal from an American Samoa longline limited access permit initial permit decision, the Regional Administrator will issue the appellant a temporary American Samoa longline limited access permit. A temporary permit will expire 20 days after the Regional Administrator's final decision on the appeal. In no event will a temporary permit be effective for longer than 60 days.

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

[70 FR 29651, May 24, 2005]

§ 665.22 Prohibitions.

In addition to the prohibitions specified in Part 600 §600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to make and/or file all reports of Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in §665.3, provided that the person is required to do so by applicable state law or regulation.

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

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

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

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

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

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

(h) Use a vessel in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of § 665.21(d)(1).

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

general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to land or transship Pacific pelagic management unit species that were harvested using longline gear, in violation of § 665.21(d)(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(bb) Engage in shallow-setting without a valid shallow-set certificate for

each shallow set made, in violation of § 665.33(c).

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

(dd) Own or operate a vessel registered for use under any longline permit issued under § 665.21 while engaged in longline fishing for Pelagic Management Unit Species without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof, in violation of § 665.34(d).

(ee) Possess light sticks on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 665.23(a) indicated that deep-setting would be done, in violation of § 665.33(d).

(ff) Fail to carry, or fail to use, a line clipper, dip net, or dehooker on a vessel registered for use under any longline permit issued under § 665.21, in violation of § 665.32.

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

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

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

(jj) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.21 north of the Equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with a 10° offset, in violation of § 665.33(f).

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

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

(mm) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 665.35(a)(1) or (a)(2).

(nn) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 665.35(a)(3).

(oo) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 665.35(a)(4), (a)(5), or (a)(6).

(pp) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 665.35(a)(7), through (a)(9).

(qq) Fail to begin the deployment of longline gear at least 1 hour after local sunset or fail to complete the setting process before local sunrise from a vessel registered for use under a Hawaii longline limited access permit while shallow-setting north of 23° N. lat., in violation of § 665.35(a)(1).

(rr) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 665.35(b).

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii

longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 665.33(b)(2), in violation of § 665.33(I).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of actual notice that the shallow-set component of the longline fishery has been closed pursuant to § 665.33(b)(2), in violation of § 665.33(i).

(uu)-(vv) [Reserved]

(ww) Fail to handle seabirds other than short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 665.35(c).

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

(yy) Fish for Pacific pelagic management unit species using gear prohibited under § 665.30 or not permitted by an EFP issued under § 665.17.

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

EFFECTIVE DATE NOTE: At 71 FR 54770, Sept. 19, 2006, § 665.22 was amended by adding paragraphs (ss) and (tt), effective Sept. 19, 2006, until Mar. 19, 2007.

§ 665.23 Notifications.

(a) The permit holder for any vessel registered for use under a Hawaii longline limited access permit or for any vessel greater than 40 ft (12.2 m) in length overall that is registered for use under an American Samoa longline limited access permit, or a designated agent, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around the Hawaiian Archipelago or American Samoa. For the purposes of this section, the vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Administrator. The