



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700
(808) 944-2200 • Fax (808) 973-2941

RE: Application for F/V _____ Permit Transfer

Dear Mr. _____:

I regret to inform you that your application for a transfer of the Class A American Samoa longline limited entry permit _____ issued to Mr. _____ has been denied. The Code of Federal Regulations, Title 50, Section 665.36, requires that a transfer of a Class A American Samoa longline permit must be to a family member, a Western Pacific fishing community in American Samoa, or a person with documented participation in the American Samoa longline fishery in a Class A size vessel before March 22, 2002. Your application did not meet these requirements. An explanation is provided below.

You applied for a transfer of a Class A American Samoa longline limited entry permit held by Mr. _____ in late November 2005, and registration of the permit to the F/V _____. You said, in a phone conversation with Walter Ikehara of my staff, that you had recently purchased the vessel. However, your application did not include a copy of the vessel registration documenting ownership of the F/V _____. We sent you a deficiency notice on November 25, 2005, requesting additional documentation, including a copy of the vessel registration and evidence of documented participation in the American Samoa longline fishery. You informed us, via a phone conversation with Mr. Ikehara, that you were not an owner of an American Samoa longline fishing vessel before March 22, 2002, but had acted as an agent for a qualifying longline fishing vessel. Mr. Ikehara asked for documentation of that relationship.

You responded in late December 2005, with copies of the bill of sale for the F/V _____ and an affidavit from Mr. _____, owner of the F/V _____, that you were his agent in business and registration and any other matter pertaining to F/V _____. We responded via FAX on December 30, 2005, that the F/V _____ was a Class C size vessel, and we cited the Code of Federal Regulations, Title 50, paragraph 660.36(i)(2), setting out the requirements for transfer of a Class A permit, which mandates that documented participation must be in a Class A size vessel. We noted that we could not determine whether you were qualified for the transfer without additional documentation.

On March 21, 2006, you informed Mr. Ikehara via phone, saying that you had recently received the ownership documents for the F/V _____ and had registered the vessel under your name with the American Samoa Government. At that time, Mr. Ikehara, in trying to help you, suggested that if the permit transfer was not possible, as you requested, your vessel could be registered to Mr. _____'s permit, because it is not required that the vessel registered to the permit be owned by the permit holder. You said that you were not interested in registering the vessel under Mr. _____'s



permit, but preferred to proceed with the transfer. He asked if you could provide documentation of participation on a Class A vessel and you said that you were an agent for a Class A vessel and would try to find documentation to support that. We received copies of the vessel registration for F/V _____ showing your name as the current owner, as well as an application form for the transfer signed by Mr. ___ on March 27, 2006. However, no documentation of your participation in the fishery on a Class A vessel was received.

Documented participation in the American Samoa longline fishery is defined in the Code of Federal Regulations, Title 50, paragraph 665.36(b)(1) as follows:

(1) *Documented participation* means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

- (i) Ownership of a vessel that was used to fish in the EEZ around American Samoa, or
- (ii) Evidence of work on a fishing trip during which longline gear was used to harvest Pacific pelagic management unit species in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (e.g., creel survey record or logbook), the applicant may request PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

Documented participation requires either ownership or evidence of working on a longline fishing trip. At this time, I cannot make the determination that acting as an agent for an American Samoa longline fishing vessel qualifies as documented participation. Absent evidence, as required by Federal regulations, that would support your eligibility for the transfer of a Class A American Samoa longline limited entry permit, I am required to deny your application for permit transfer.

You may appeal the denial to the NMFS Pacific Islands Regional Administrator in writing within 30 days of this action, at which time you may provide additional information pertinent to your appeal. Please see Sections 665.139m) and 665.801(o) in the copy of the regulations enclosed for the appeal procedure.

If you have any questions, you may contact Walter Ikehara at (808) 944-2275 or FAX (808) 973-2941.

Sincerely,

Alvin Z. Katekaru
Assistant Regional Administrator

PART 665—FISHERIES IN THE WESTERN PACIFIC

§665.13 Permits and fees

(m) *Permit appeals.* Procedures for appeals of permitting and administrative actions are specified in the relevant subparts of this part.

Subpart F—Western Pacific Pelagic Fisheries

§665.801 Permits

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

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

(1) To fish for western Pacific pelagic MUS using longline gear in the EEZ around the Hawaiian Archipelago; or

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

(c) A vessel of the United States must be registered for use under a valid American Samoa longline limited access permit, in accordance with §665.816, if that vessel is used to:

(1) Fish for western Pacific pelagic MUS using longline gear in the EEZ around American Samoa;

(2) Land shoreward of the outer boundary of the EEZ around American Samoa western Pacific pelagic MUS that were harvested using longline gear in the EEZ around American Samoa; or

(3) Transship shoreward of the outer boundary of the EEZ around American Samoa western Pacific pelagic MUS that were harvested using longline gear in the EEZ around American Samoa or on the high seas.

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

(1) Fish for western Pacific pelagic MUS using longline gear in the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll); or

(2) Land or transship shoreward of the outer boundary of the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll), western Pacific pelagic MUS that were harvested using longline gear.

(e) A receiving vessel of the United States must be registered for use with a valid receiving vessel permit if that vessel is used to land or transship, shoreward of the outer boundary of the EEZ around American Samoa, Hawaii, Guam, CNMI, or PRIA, western Pacific pelagic MUS that were harvested using longline gear.

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

(g) A vessel of the United States must be registered for use under a Western Pacific squid jig fishing permit, if that vessel is more than 50 ft (15.4 m) LOA and is used to squid jig fish in EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA.

(h) Any required permit must be valid and on board the vessel and available for inspection by an authorized agent, except that, if the permit was issued (or registered to the vessel) during the fishing trip in question, this requirement applies only after the start of any subsequent fishing trip.

(i) 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.

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

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

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

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

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

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

(2) [Reserved]

(m) 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).

(n) 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.

(o) Permit appeals. Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal must be in writing, must state the action(s) appealed, and the reasons therefore,

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 Western Pacific Pelagic FEP, 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 (o)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefore, 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 and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Administrator.

(3) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefore, 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 (o)(4) of this section, the Regional Administrator, for good cause, may extend any time limit prescribed in this section for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefore.