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Title 50 - Wildlife and Fisheries

Chapter III - International Fishing and Related Activities

Part 300 - International Fisheries Regulations

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Subpart D South Pacific Tuna Fisheries

- § 300.30 Purpose and scope.
- § 300.31 Definitions.
- § 300.32 Vessel licenses.
- § 300.33 Compliance with applicable national laws.
- § 300.34 Reporting requirements.
- § 300.35 Vessel and gear identification.
- § 300.36 Closed area stowage requirements.
- § 300.37 Radio monitoring.
- § 300.38 Prohibitions.
- § 300.39 Exceptions.
- § 300.40 Civil penalties.
- § 300.41 Investigation notification.
- § 300.42 Findings leading to removal from fishing area.
- § 300.43 Observers.
- § 300.44 Other inspections.
- § 300.45 Vessel Monitoring System.
- § 300.46 Transshipping requirements.

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Subpart D - South Pacific Tuna Fisheries

Authority: 16 U.S.C. 973-973r.

§ 300.30 Purpose and scope.

This subpart implements the South Pacific Tuna Act of 1988 (Act) and the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and applies to persons and vessels subject to the jurisdiction of the United States.

§ 300.31 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Treaty, and unless the context requires otherwise, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

Administrator means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States.

Applicable national law means any of the laws of Pacific Island Parties in the following table and any regulations or other instruments having the force of law implemented pursuant to these laws:

Pacific Island Party	Laws
AUSTRALIA	Antarctic Marine Living Resources Conservation Act, 1981. Fisheries Management Act, 1991.
	Fisheries Administration Act, 1991. Statutory Fishing Rights Charge Act, 1991. Fisheries Legislation (Consequential Provisions) Act, 1991. Foreign Fishing Licences Levy Act, 1991. Fishing Levy Act, 1991. Fisheries Agreements (Payments) Act, 1991. Torres Strait Fisheries Act, 1984. Whale Protection Act, 1980.
COOK ISLANDS	Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1979. Territorial Sea and Exclusive Economic Zone Act, 1977. Marine Resources Act, 1989.
FEDERATED STATES OF MICRONESIA	Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2-28, 2-31, 3-9, 3-10, 3-34, and 3-80.
FIJI	Fisheries Act (Cap. 158). Fisheries Regulations (Cap. 158). Marine Spaces Act (Cap. 158A). Marine Spaces (Foreign Fishing Vessels) Regulations, 1979.
KIRIBATI	Fisheries Ordinance, 1979. Fisheries (Amendment) Act, 1984. Marine Zones (Declaration) Act, 1983. Fisheries (Pacific Island States' Treaty with the United States) Act 1988.
MARSHALL ISLANDS	Title 33, Marine Resources Act, as amended by P.L. 1989-56, P.L. 1991-43, and P.L. 1992-25 of the Marshall Islands Revised Code.
NAURU	Interpretation Act, 1971. Interpretation Act (Amendment) Act No. 1 1975. Interpretation Act (Amendment) Act No. 2 1975. Marine Resources Act, 1978.
NEW ZEALAND	Antarctic Marine Living Resources Act, 1981. Continental Shelf Act, 1964. Conservation Act, 1987.
	Driftnet Prohibition Act, 1991. Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1978.

Pacific Island Party	Laws
	Fishing Industry Board Act, 1963. Fisheries Act, 1983. Marine Mammals Protection Act, 1978. Marine Reserves Act, 1971. Marine Pollution Act, 1974. Meat Act, 1964. Territorial Sea and Exclusive Economic Zone Act, 1977. Tokelau (Territorial Sea and Exclusive Economic Zone) Act, 1977. Submarine Cables and Pipelines Protection Act, 1966. Sugar Loaf Islands Marine Protected Area Act, 1991. Wildlife Act, 1953.
NIUE	Niue Fish Protection Ordinance 1965. Sunday Fishing Prohibition Act 1980. Territorial Sea and Exclusive Economic Zone Act 1978.
PALAU	Palau National Code, Title 27.
PAPUA NEW GUINEA	Fisheries Act (Cap 214). Fisheries Regulations (Cap 214). Fisheries (Torres Strait Protected Zone) Act, 1984. National Seas Act (Cap 361). Tuna Resources Management Act (Cap 224). Whaling Act (Cap 225).
SOLOMON ISLANDS	Delimitation of Marine Waters Act, 1978. Fisheries Act, 1972. Fisheries Limits Act, 1977. Fisheries Regulations, 1972. Fisheries (Foreign Fishing Vessels) Regulations, 1981. Fisheries (United States of America) (Treaty) Act 1988.
TONGA	Fisheries Act, 1989.
TUVALU	Fisheries Act (Cap 45). Fisheries (Foreign Fishing Vessel) Regulations, 1982. Marine Zones (Declaration) Act, 1983. Foreign Fishing Vessels Licensing (US Treaty) Order 1987.
VANUATU	Fisheries Act 1982 (Cap 158). Fisheries Regulations, 1983. Maritime Zones Act 1981 (Cap 138).
SAMOA	Exclusive Economic Zone Act, 1977. Territorial Sea Act, 1971. Fisheries Act, 1988.

Authorized inspector means any individual authorized by a Pacific Island Party or the Secretary to conduct inspections, to remove samples of fish and to gather any other information relating to fisheries in the Licensing Area.

Authorized officer means any officer who is authorized by the Secretary, or the Secretary of Transportation, or the head of any Federal or state agency that has entered into an enforcement agreement with the Secretary under section 10(a) of the Act.

Authorized party officer means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

Closed area means any of the areas in the following table, as depicted on charts provided by the Regional Administrator and as further described in additional information that may be provided by the Regional Administrator:

Pacific Island Party	Area
AUSTRALIA	All waters within the seaward boundary of the Australian Fishing Zone (AFZ) west of a line connecting the point of intersection of the outer limit of the AFZ by the parallel of latitude 25° 30' South with the point of intersection of the meridian of longitude 151° East by the outer limit of the AFZ and all waters south of the parallel of latitude 25° 30' South.
COOK ISLANDS	Territorial Sea.
FEDERATED STATES OF MICRONESIA	Three nautical mile territorial sea and nine nautical mile exclusive fishery zone and on all named banks and reefs as depicted on the following charts:
	DMAHTC NO 81019 (2nd. ed., Mar. 1945; revised 7/17/72; corrected through NM 3/78 of 21 June 1978).
	DMAHTC NO 81023 (3rd. ed., 7 Aug. 1976).
	DMAHTC NO 81002 (4th. ed., 26 Jan. 1980; corrected through NM 4/80).
FIJI	Internal waters, archipelagic waters and territorial seas of Fiji and Rotuma and its Dependencies.
KIRIBATI	Within archipelagic waters as established in accordance with Marine Zones (Declaration) Act 1983; within 12 nautical miles drawn from the baselines from which the territorial seas is measured; and within 2 nautical miles of any anchored fish aggregating device within the Kiribati exclusive economic zone for which notification of its location shall be given by geographical coordinates.
MARSHALL ISLANDS	12 nautical mile territorial sea and area within two nautical miles of any anchored fish aggregating device within the Marshall Islands exclusive economic zone for which notification of its location shall be given by geographical coordinates.
NAURU	The territorial waters as defined by Nauru Interpretation Act, 1971, Section 2.
NEW ZEALAND	Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39° South latitude; all waters to east of New Zealand main islands south of 40° South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Faka'ofu; and coordinates as follows:
	Atafu: 8°35'10" S, 172°29'30" W
	Nukunonu: 9°06'25" S, 171°52'10" W 9°11'30" S, 171°47'00" W
	Faka'ofu: 9°22'30" S, 171°16'30" W
NIUE	Territorial sea and within 3 nautical miles of Beveridge Reef, Antiope Reef and Haran Reef as depicted by appropriate symbols on NZ 225F (chart showing the territorial sea and exclusive economic zone of Niue pursuant to the Niue Territorial Sea and Exclusive Economic Zone Act of 1978).

Pacific Island Party	Area
PALAU	Within 12 nautical miles of all island baselines in the Palau Islands; and the area: commencing at the north-easternmost intersection of the outer limit of the 12 nautical mile territorial sea of Palau by the arc of a circle having a radius of 50 nautical miles and its center at Latitude 07°16'34" North, longitude 134°28'25" East, being at about the center of the reef entrance to Malakal Pass; running thence generally south-easterly, southerly, south-westerly, westerly, north-westerly, northerly and north-easterly along that arc to its intersection by the outer limit of the 12 nautical mile territorial sea; and thence generally northerly, north-easterly, easterly, south-easterly and southerly along that outer limit to the point of commencement.
	Where for the purpose of these specifications it is necessary to determine the position on the surface of the Earth of a point, line or area, it shall be determined by reference to the World Geodetic System 1984; that is to say, by reference to a spheroid having its center at the center of the Earth and a major (equatorial) radius of 6,378,137 meters and a flattening of 1/298.2572.
PAPUA NEW GUINEA	All territorial seas, archipelagic and internal waters.
SOLOMON ISLANDS	All internal waters, territorial seas and archipelagic waters; and such additional waters around the main group archipelago, as defined under the Delimitation of Marine Waters Act 1978, not exceeding sixty nautical miles.
TONGA	All waters with depths of not more than 1,000 meters, within the area bounded by the fifteenth and twenty third and one half degrees of south latitudes and the one hundred and seventy third and the one hundred and seventy seventh degrees of west longitudes; also within a radius of twelve nautical miles from the islands of Teleki Tonga and Teleki Tokelau.
TUVALU	Territorial sea and waters within two nautical miles of all named banks, that is Macaw, Kosciusko, Rose, Bayonnaise and Hera, in Tuvalu exclusive economic zone, as depicted on the chart entitled "Tuvalu Fishery Limits" prepared by the United Kingdom Hydrographic Department, Taunton, January 11, 1981.
VANUATU	Archipelagic waters and the territorial sea, and internal waters.
SAMOA	Territorial sea; reefs, banks and sea-mounts and within 2 nautical miles of any anchored fish aggregating device within the Samoa exclusive economic zone for which notification of its location shall be given by geographical coordinates.

FFA Vessel Register means the registry of fishing vessels maintained by the FFA, comprising those vessels which are in good standing and licensed to fish in the waters of FFA member countries, including those vessels licensed under § 300.32.

Fishing means searching for, catching, taking, or harvesting fish; attempting to search for, catch, take, or harvest fish; engaging in any other activity that can reasonably be expected to result in the locating, catching, taking, or harvesting of fish; placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons; any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or aircraft use, relating to the activities described in this definition, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

Fishing arrangement means an arrangement between a Pacific Island Party and the owner of a U.S. fishing vessel that complies with section 6(b) of the Act.

Fishing vessel or vessel means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for commercial fishing, and that is documented under the laws of the United States.

Licensing Area means all waters in the Treaty Area except for:

- (1) Those waters subject to the jurisdiction of the United States in accordance with international law.
- (2) Those waters within closed areas.
- (3) Those waters within limited areas closed to fishing.

Licensing period means the period of validity of licenses issued in accordance with the Treaty.

Operator means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master.

Pacific Island Party means a Pacific island nation that is a party to the Treaty.

Pacific Islands Forum Fisheries Agency or FFA means the organization established by the 1979 South Pacific Forum Fisheries Agency Convention.

Regional Administrator means the Regional Administrator, Pacific Islands Region, NMFS, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, facsimile: 808-725-5215, or a designee.

Transship means to unload any or all of the fish on board a licensed vessel either ashore or onto another vessel.

Treaty Area means all waters north of 60° S. lat. and east of 90° E. long., subject to the fisheries jurisdiction of Pacific Island Parties, and all other waters within rhumb lines connecting the following points, except for waters subject to the jurisdiction in accordance with international law of a State which is not a party to the Treaty:

Point	Latitude	Longitude
A	2°35'39" S	141°00'00" E
B	1°01'35" N	140°48'35" E
C	1°01'35" N	129°30'00" E
D	10°00'00" N	129°30'00" E
E	14°00'00" N	140°00'00" E
F	14°00'00" N	142°00'00" E
G	12°30'00" N	142°00'00" E
H	12°30'00" N	158°00'00" E
I	15°00'00" N	158°00'00" E
J	15°00'00"	165°00'00" E

Point	Latitude	Longitude
	N	
K	18°00'00" N	165°00'00" E
L	18°00'00" N	174°00'00" E
M	12°00'00" N	174°00'00" E
N	12°00'00" N	176°00'00" E
O	5°00'00" N	176°00'00" E
P	1°00'00" N	180°00'00"
Q	1°00'00" N	164°00'00" W
R	8°00'00" N	164°00'00" W
S	8°00'00" N	158°00'00" W
T	0°00'00"	150°00'00" W
U	6°00'00" S	150°00'00" W
V	6°00'00" S	146°00'00" W
W	12°00'00" S	146°00'00" W
X	26°00'00" S	157°00'00" W
Y	26°00'00" S	174°00'00" W
Z	40°00'00" S	174°00'00" W
AA	40°00'00" S	171°00'00" W
AB	46°00'00" S	171°00'00" W
AC	55°00'00" S	180°00'00"
AD	59°00'00" S	160°00'00" E
AE	59°00'00" S	152°00'00" E and north along the 152 degrees of East longitude until intersecting the Australian 200-nautical-mile limit.

UTC means Universal Coordinated Time.

Vessel Monitoring System Unit or VMS unit, sometimes known as a "mobile transmitting unit," means Administrator-approved and NMFS-approved VMS unit hardware and software that is installed on a vessel pursuant to § 300.45. The VMS units are a component of the regional vessel monitoring system administered by the FFA, as well as of the vessel monitoring system administered by NMFS, and as such are used to transmit information between the vessel and the Administrator and NMFS and/or other reporting points designated by NMFS.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6149, Feb. 9, 2007; 75 FR 74643, Dec. 1, 2010; 79 FR 64110, Oct. 28, 2014]

§ 300.32 Vessel licenses.

- (a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless exempted by § 300.39. Each licensing period begins on June 15 and ends on June 14 of the following year.
- (b) Upon receipt, the license or a copy or facsimile thereof must be carried on board the vessel when in the Licensing Area or Closed Areas, and must be produced at the request of authorized officers, authorized party officers, or authorized inspectors. A vessel may be used to fish in the Licensing Area if the license has been issued but not yet received, provided that the license number is available on board.
- (c) The total number of licenses that may be issued and valid at any point in time is 45, five of which shall be reserved for fishing vessels of the United States engaged in joint venture arrangements.
 - (1) For the purpose of this section, the licenses reserved for vessels engaged in joint venture arrangements are referred to as "joint venture licenses," and the remaining licenses are referred to as "general licenses."
 - (2) A joint venture arrangement is one in which the subject vessel and its operators are engaged in fishing-related activities designed to maximize the benefits generated for the Pacific Island Parties from the operations of fishing vessels licensed pursuant to the Treaty, as determined by the Administrator. Such activities can include the use of canning, transshipment, vessel slipping and repair facilities located in the Pacific Island Parties; the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island Parties; and the employment of nationals of the Pacific Island Parties on board such vessels.
- (d) Licenses are issued by the Administrator. The Administrator will issue licenses only for applications that have been approved by the Regional Administrator. The Regional Administrator's approval is indicated by the signature of the Regional Administrator on the part of the application form labeled "Schedule 1." Upon approval by the Regional Administrator of a license application, the complete application will be forwarded to the Administrator for consideration. Except as provided in paragraph (n) of this section, prior to approving license applications for a given licensing period, the Regional Administrator will issue pre-approvals of license applications that serve the purpose of temporarily reserving approvals up until the time complete applications are due to be received by the Regional Administrator.
- (e) The Regional Administrator, in his or her sole discretion, may approve fewer license applications than there are licenses available for any given licensing period or at any given time.
- (f) A pre-approval or approval issued by the Regional Administrator pursuant to this section:
 - (1) Shall not confer any right of compensation to the recipient of such pre-approval or approval;
 - (2) Shall not create, or be construed to create, any right, title, or interest in or to a license or any fish; and

(3) Shall be considered a grant of permission to the recipient of the pre-approval or approval to proceed with the process of seeking a license from the Administrator.

(g) A pre-approval or approval issued by the Regional Administrator pursuant to this section is subject to being rescinded at any time if the Regional Administrator determines that an administrative error has been made in its granting, false information has been provided by the applicant, circumstances have changed such that the information provided by the applicant is no longer accurate, true or valid, or if the applicant or vessel no longer meets the requirements for licensing under this subpart or under the Act or other applicable law. NMFS will notify the applicant of its rescission of a pre-approval or approval within 14 days of the rescission. In the event that the Regional Administrator rescinds an approval after the license has been issued, NMFS will notify the Administrator of such, and request that the Administrator immediately revoke the license.

(h) ***Application process for general licenses.***

(1) A vessel operator who satisfies the requirements for licensing under the Act and under this subpart may apply for a general license.

(2) In order for a general license to be issued for a vessel, an applicant must submit a complete application to, and obtain an application approval from, the Regional Administrator.

(3) Except for the 2011-2012 licensing period, prior to submitting a complete application, an applicant may request pre-approval of an application by the Regional Administrator by submitting an expression of interest. A pre-approval of an application establishes that the applicant is eligible to be considered for one of the available licenses following timely submission of a complete application. Although submission of an expression of interest is entirely voluntary, applications that have not been pre-approved might not be eligible for approval if the number of applications exceeds the number of available licenses for a given licensing period. A pre-approval will be deemed to be void if the applicant fails to submit a complete application by the date established in paragraph (h)(6) of this section.

(4) Except as provided in paragraph (n) of this section, in order to obtain a pre-approval for a given licensing period, either an expression of interest or a complete application must be submitted to and received by the Regional Administrator no later than June 1st of the year preceding the year in which the licensing period begins.

(5) An expression of interest must include the information listed below, which may be submitted by electronic or hard-copy correspondence following instructions provided by the Regional Administrator.

(i) If the expression of interest is for a vessel for which, as of the June 1st due date for submitting such expression of interest, NMFS has issued an application approval for the licensing period that starts that year (i.e., a renewal of the license is being sought), the expression of interest shall include:

(A) The licensing period for which the license is being sought.

(B) The current name, IRCS, and annual USCG Certificate of Documentation number of the vessel.

(ii) For all other expressions of interest that do not meet the criteria in paragraph (h)(5)(i) of this section, the expression of interest shall include:

- (A) The licensing period for which the license is being sought.
 - (B) The full name and address of each person who is, or who is anticipated to be, an operator of the vessel for which a license is sought, and for each such person, a statement of whether the person is, or is anticipated to be, owner, charterer, and/or master of the vessel.
 - (C) A statement of whether or not the vessel to be licensed is known, and if it is known, the current name, IRCS, and annual USCG Certificate of Documentation number, if any, of the vessel.
 - (D) A copy of the vessel's current USCG Certificate of Documentation. If the vessel has not been issued such a document, then a statement of whether application has been or will be made for a USCG Certificate of Documentation, including identification of all endorsements sought in such application.
 - (E) If the vessel is known, a list of the licensing periods, if any, during which a license for the vessel was issued under this section.
 - (F) If the vessel is known, a statement of the total amount, in metric tons, of any tuna species landed or transshipped from the vessel at United States ports, including ports located in any of the States, for each of the calendar years 1988 through the current year.
- (6) A complete application for a given licensing period may be submitted to the Regional Administrator at any time up to May 15th within the licensing period, but in order to be considered for approval in the event that more applications are received by the Regional Administrator than there are licenses available, a complete application must be received by the Regional Administrator as follows:
- (i) No later than February 5th of the year in which the licensing period begins; or
 - (ii) If a pre-approval of the application was issued in accordance with paragraphs (k)(8) or (k)(9) of this section, not later than the date specified by NMFS in the notification of such pre-approval (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval).
- (7) License application forms, which include the "Schedule 1" form and the FFA Vessel Register application form, are available from the Regional Administrator. The complete application must be received by the Regional Administrator as specified in paragraph (h)(6) of this section. An application shall not be complete, and shall not be subject to processing, unless it contains all of the information specified on the "Schedule 1" form and all the items listed in paragraphs (h)(7)(i) through (h)(7)(x) of this section, as follows:
- (i) The licensing period for which the license is requested.
 - (ii) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty.
 - (iii) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance.

- (iv) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, a statement that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines.
- (v) A copy of the vessel's current annual USCG Certificate of Documentation.
- (vi) Electronic versions of full color photographs of the vessel in its current form and appearance, including a bow-to-stern side-view photograph of the vessel that clearly and legibly shows the vessel markings, and a photograph of every area of the vessel that is marked with the IRCS assigned to the vessel.
- (vii) A schematic stowage/well plan for the vessel.
- (viii) A copy of the VMS unit installation certificate, issued by the Administrator-authorized person who installed the VMS unit, for the VMS unit installed on the vessel in accordance with § 300.45.
- (ix) An FFA Vessel Register application form that includes all the applicable information specified in the form.
- (x) In the case of an application for a vessel that does not meet the criteria in paragraph (h)(5)(i) of this section, any information under paragraph (h)(5)(ii) of this section that has not already been provided or that has changed since it was previously submitted.

(i) **Application process for joint venture licenses.**

- (1) A vessel operator who satisfies the requirements for licensing under the Act and under this subpart may apply for a joint venture license.
- (2) The applicant, in coordination with one or more Pacific Island Parties, shall contact the Administrator to determine the specific information and documents that are required by the Administrator in order to obtain an initial approval from the Administrator for a joint venture license. The applicant shall submit such required information and documents directly to the Administrator. Once an initial approval is obtained from the Administrator, the applicant shall submit a complete application package, as described in paragraph (h)(7) of this section, to the Regional Administrator, along with dated documentation of the Administrator's initial approval, and a letter or other documentation from the relevant national authority or authorities of the Pacific Island Party or Parties identifying the joint venture partner or partners and indicating the Party's or Parties' approval of the joint venture arrangement and its or their concurrence that a joint venture license may be issued for the vessel.

(j) **Appeals -**

- (1) **Eligibility.** Any applicant who is denied a pre-approval or an approval under this section may appeal the denial. The appeal must be made in writing and must clearly state the basis for the appeal and the nature of the relief that is requested. The appeal must be received by the Regional Administrator not later than 14 days after the date that the notice of denial is postmarked.
- (2) **Appeal review.** Upon receipt of an appeal, the Regional Administrator will appoint a designee who will review the basis of the appeal and issue an initial written decision. The written decision will be mailed to the applicant within 30 days of receipt of the appeal. If the appellant does not request a review within 10 days of mailing of the initial decision, the initial decision is the final administrative action of the Department of Commerce. If, within 10 days of mailing of the initial decision, the

Regional Administrator receives from the appellant a written request for review of the initial decision, the Assistant Administrator or a designee will review the basis of the appeal and issue a final written decision. The final decision will be made within 30 days of receipt of the request for review of the initial decision. The decision of the Assistant Administrator or designee constitutes the final administrative action of the Department of Commerce.

- (k) ***Procedures used by the Secretary to review and process applications for general licenses.*** The procedures in this paragraph apply to the process used by NMFS, on behalf of the Secretary and in consultation with the Secretary of State, to review expressions of interest and complete applications, and to approve applications. For the purpose of this section, NMFS' approval of an application means the signing by the Regional Administrator of the "Schedule 1" part of the application form, indicating that the application is complete and that it meets the requirements of the Act and of this subpart for forwarding to the Administrator. For the purpose of this section, NMFS' pre-approval of an application means that the Regional Administrator has initially determined that the applicant is eligible for a general license, but that the application has not yet been approved for forwarding to the Administrator.
- (1) NMFS will pre-approve no more applications for a given licensing period than there are licenses available for that licensing period. A pre-approval will be deemed to be void if the applicant fails to submit a complete application by the date established in paragraph (h)(6) of this section.
 - (2) NMFS will approve no more applications for a given licensing period than there are licenses available for that licensing period.
 - (3) NMFS will not approve a license application if it determines that:
 - (i) The application is not in accord with the Treaty, Act, or regulations;
 - (ii) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;
 - (iii) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or
 - (iv) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.
 - (4) Except as provided in paragraph (n) of this section, no later than July 16th of each year, NMFS will pre-approve applications from among the expressions of interest and complete applications that were received by June 1st of the current year for the licensing period that starts the following year as provided in this paragraph. If the number of expressions of interest and complete applications does not exceed the number of licenses available, all applications that meet the requirements of paragraphs (h)(4) and (h)(5) of this section and that satisfy the relevant requirements for licensing under the Act and this subpart will be pre-approved. If the number of expressions of interest and complete applications exceeds the number of licenses available, those that meet the requirements of paragraphs (h)(4) and (h)(5) of this section and that satisfy the relevant requirements for licensing under the Act and this subpart will be prioritized for pre-approval as follows:

- (i) First priority will be given to expressions of interest and complete applications for vessels for which, as of June 1st of that year, application approvals have been issued by NMFS for the licensing period that starts that year (*i.e.*, anticipated license renewal applications), provided that such vessels continue to satisfy the requirements for licensing under the Act and this subpart, and provided such vessels have no unsatisfied civil penalties or fines assessed by the Secretary under the Act that have become final.
- (ii) Second priority will be given to expressions of interest and complete applications scored using the following system, in descending order of the sum of the points assigned:
 - (A) 15 points will be assigned for a vessel that has been issued, or will be issued by the date complete applications are due to be received by the Regional Administrator under paragraph (h)(6) of this section, a valid USCG Certificate of Documentation with a fishery endorsement.
 - (B) 1 point will be assigned for each licensing period, starting with the 1988-1989 licensing period, in which a license had been issued for the vessel pursuant to the Act, for a total of no more than 10 points.
 - (C) 1 point will be assigned for each calendar year in which at least 3,000 metric tons of fish were landed or transshipped from the vessel in United States ports, including ports located in any of the States, as determined by the Regional Administrator. The applicable period shall run from 1988 through the last calendar year prior to the year in which the applied-for licensing period starts, and the total number of points assigned shall be no more than 5.
 - (D) In the event that two or more vessels receive the same sum number of points under paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(C) of this section, priority will be given to the vessel from which the greatest amount of fish, by weight, was landed or transshipped in United States ports, including ports located in any of the States, starting in calendar year 1988 and ending in the year prior to the year in which the applied-for licensing period starts, as determined by the Regional Administrator. In the event that that does not resolve the tie, priority will be given by lottery, which will be conducted by the Regional Administrator.
- (5) Except as provided in paragraph (n) of this section, no later than July 26th of each year, NMFS will send notifications by mail to all applicants that submitted expressions of interest or complete applications by June 1st of that year, indicating whether their applications (for the licensing period that starts the following year) have been pre-approved.
- (6) No later than March 7th of each year, NMFS will approve applications (for the licensing period that starts that year) that satisfy all of the following conditions:
 - (i) The application was pre-approved;
 - (ii) The information associated with the application has not changed since the point of pre-approval in a way such that pre-approval would not have been made using the updated information;
 - (iii) The complete application was received by February 5th of the same year; and
 - (iv) The applicant satisfies the requirements for licensing under the Act and this subpart.

- (7) No later than March 17th of each year, NMFS will notify all applicants (for the licensing period that starts that year) who submitted complete applications by February 5th of that year, whether their applications have been approved under paragraph (k)(6) of this section, and in cases where they have not, whether their applications are being considered for approval under paragraph (k)(8) of this section.
- (8) In the event that additional licenses for a given licensing period are available after issuing the approvals under paragraph (k)(6) of this section, NMFS will, after final administrative action by the Department of Commerce on any appeals made under paragraph (j) of this section, do the following:
 - (i) If the number of outstanding expressions of interest (*i.e.*, expressions of interest that have not been pre-approved) received by June 1st of the year preceding the year in which the licensing period begins, plus the number of outstanding complete applications (*i.e.*, complete applications that have not been approved) received by February 5th of the year in which the licensing period begins, exceeds the number of licenses available, NMFS will review all such outstanding expressions of interest and complete applications and apply the process described in paragraphs (k)(9)(i)(A) through (k)(9)(i)(C) of this section to pre-approve and approve applications from among that pool of applicants;
 - (ii) If the number of outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins, plus the number of outstanding complete applications received by February 5th of the year in which the licensing period begins, does not exceed the number of licenses available:
 - (A) No later than June 15th of the year in which the licensing period begins, NMFS will pre-approve all such outstanding expressions of interest and complete applications that satisfy the relevant requirements for licensing under the Act and this subpart;
 - (B) No later than June 25th of the year in which the licensing period begins, NMFS will notify all such outstanding applicants of the pre-approvals, and for those applicants that submitted expressions of interest but not complete applications, also notify them of the date by which a complete application must be received in order to be issued an application approval (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval);
 - (C) NMFS will review all complete applications received by the required date from applicants pre-approved under paragraph (8)(ii)(A) of this section, and within 30 days of such receipt, approve the application, if and as appropriate and if the applicant satisfies the requirements for licensing under the Act and this subpart; and
 - (D) If and as long as the number of approvals plus outstanding (not voided) pre-approvals does not exceed the total number of licenses available under paragraph (c) of this section, NMFS will review all complete applications received after February 5th of the year in which the licensing period begins and before May 16th within the licensing period and, as they are received and in the order they are received (based on the day of receipt), will approve those applications that satisfy the requirements for licensing under the Act and this subpart until no more approvals are available. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery, which will be conducted by the Regional Administrator.
 - (iii) Within 10 days of approving an application, NMFS will notify the applicant.

- (9) If a license or application approval that has been issued for a given licensing period becomes available before or during that licensing period, NMFS will do the following:
- (i) If there are any outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins or outstanding complete applications received by February 5th of the year in which the licensing period begins, NMFS will review all such outstanding expressions of interest and complete applications and pre-approve and approve applications for that license from among that pool as follows:
 - (A) Within 45 days of NMFS becoming aware of the availability of the license, NMFS will pre-approve an application using the prioritization criteria and point-assigning system described in paragraphs (k)(4)(i) and (k)(4)(ii) of this section;
 - (B) Within 55 days of NMFS becoming aware of the availability of the license NMFS will notify all active applicants as to whether their applications have been pre-approved, and for those applications that have been pre-approved, notify each applicant of the date by which a complete application, if not already received, must be received (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval); and
 - (C) Within 30 days of receiving a complete application that had been pre-approved, NMFS will approve the application, if and as appropriate and if the applicant satisfies the requirements of this subpart.
 - (ii) If there are no outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins and no outstanding complete applications received by February 5th of the year in which the licensing period begins, if and as long as the number of approvals plus outstanding (not voided) pre-approvals does not exceed the number of licenses available, NMFS will review all complete applications received after February 5th of the year in which the licensing period begins and before May 16th within the licensing period and, in the order they are received (based on the day of receipt), will approve those applications that satisfy the requirements for licensing under the Act and this subpart until no more approvals are available. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery, which will be conducted by the Regional Administrator.
 - (iii) Within 10 days of approving an application, NMFS will notify the applicant.
- (l) ***Procedures used by the Secretary to review and process applications for joint venture licenses.*** NMFS, on behalf of the Secretary and in consultation with the Secretary of State, will review and approve applications for joint venture licenses as described in paragraph (k) of this section for general licenses, except that NMFS will not consider expressions of interest for joint venture licenses or pre-approve applications for joint venture licenses. In the event that NMFS receives for a given licensing period more applications for joint venture licenses than there are licenses available, it will approve the applications in the chronological order that the Administrator has provided its initial approval.
- (m) ***Transferability of application approvals.*** Application approvals from NMFS are not transferable among vessel owners or operators or license applicants. Application approvals are transferable among vessels, subject to the following requirements:

- (1) A vessel operator may seek to transfer a general or joint venture license to another vessel that meets the requirements for licensing under this subpart and the Act, only if the license has been valid for the vessel for at least 365 consecutive days and all the fees required by the Administrator for the current licensing period have been paid to the Administrator. The vessel operator may seek to transfer the license by submitting a written request to the Regional Administrator along with a complete application for the other vessel as described in paragraph (h)(7) of this section. Any such transfer may be subject to additional fees for the registration of the vessel on the FFA Vessel Register, as specified in paragraph (b) of § 300.45.
 - (2) Upon receipt of a request and complete application under paragraph (m)(1) of this section, the Regional Administrator, after determining that all the fees required for the vessel by the Administrator for the current licensing period have been paid, that the ownership of the licensed vessel and the ownership of the vessel to which the application approval would be transferred are identical, and that the transferee vessel meets the requirements for licensing under this subpart and the Act, will approve the application and notify the applicant of such within 10 days of the determination.
 - (3) If a licensed vessel is lost or destroyed, and the operators of the vessel apply for a license for another vessel for the licensing period during which the vessel was lost, or for either of the two subsequent licensing periods, NMFS will consider the replacement vessel to have the license application approval status and history of the lost or destroyed vessel for the purpose of applying the prioritization criteria of paragraph (k)(4) of this section, provided that the ownership of the lost or destroyed vessel and the ownership of the replacement vessel, as determined by the Regional Administrator, are identical, and the replacement vessel meets the requirements for licensing under this subpart and the Act.
- (n) *Procedures for 2011-2012 licensing period.* For the licensing period that starts June 15, 2011, and for that licensing period only, pre-approvals may not be sought and will not be issued by NMFS. NMFS will rank order those applications received by February 5, 2011, for the 2011-2012 licensing period by applying the criteria in paragraphs (k)(4)(i) and (k)(4)(ii) of this section, except that in lieu of using the criteria in (k)(4)(i), first priority will be given to applications for vessels that as of February 5, 2011, have valid licenses for the 2010-2011 licensing period.

[75 FR 74644, Dec. 1, 2010]

§ 300.33 Compliance with applicable national laws.

The operator of the vessel shall comply with each of the applicable national laws, and the operator of the vessel shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

§ 300.34 Reporting requirements.

- (a) Holders of licenses issued under § 300.32 shall comply with the reporting requirements of this section with respect to the licensed vessels.
- (b) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances that has the effect of rendering any of the information provided false, incomplete or misleading shall be communicated immediately to the Regional Administrator.

- (c) The operator of any vessel licensed under § 300.32 must prepare and submit accurate, complete, and timely notifications, requests, and reports with respect to the licensed vessel, as described in paragraphs (c)(1) through (10) of this section.
- (1) **Catch report forms.** A record of catch, effort and other information must be maintained on board the vessel, on catch report forms (also known as “Regional Purse Seine Logsheets”, or RPLs) provided by the Regional Administrator. At the end of each day that the vessel is in the Licensing Area, all information specified on the form must, for that day, be recorded on the form. The completed catch report form must be mailed by registered airmail to the Administrator within 14 days of the vessel's next entry into port for the purpose of unloading its fish catch. A copy of the completed catch report form must also be submitted to, and received by, the Regional Administrator within 2 days of the vessel reaching port.
 - (2) **Unloading and transshipment logsheet forms.** At the completion of any unloading or transshipment of fish from the vessel, all the information specified on unloading and transshipment logsheet forms provided by the Regional Administrator must, for that unloading or transshipment, be recorded on such forms. A separate form must be completed for each fish processing destination to which the unloaded or transshipped fish are bound. The completed unloading and transshipment logsheet form or forms must be mailed by registered airmail to the Administrator within 14 days of the completion of the unloading or transshipment. The submitted form must be accompanied by a report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, and such report must be signed by the receiver or receivers. A copy of the completed unloading and transshipment logsheet, including a copy of the accompanying report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, must also be submitted to, and received by, the Regional Administrator within 2 days of the completion of the unloading or transshipment.
 - (3) **Port departure reports.** Before the vessel's departure from port for the purpose of beginning a fishing trip in the Licensing Area, a report must be submitted to the Administrator by telex, transmission via VMS unit, facsimile, or e-mail that includes the following information: Report type (“LBEG”); Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date of departure. This information must be reported in the format provided by the Regional Administrator.
 - (4) **Entry into port for unloading reports.** At least 24 hours before the vessel's entry into port for the purpose of unloading fish from any trip involving fishing within the Licensing Area, a report must be submitted to the Administrator by telex, transmission via VMS unit, facsimile, or e-mail that includes the following information: Report type (“LFIN”); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date and time (in UTC) of entry into port. This information must be reported in the format provided by the Regional Administrator.
 - (5) **Intent to transship notification and request.** At least 48 hours before transshipping any or all of the fish on board the vessel, a notification must be submitted to the Administrator and a request must be submitted to the Pacific Island Party in whose jurisdiction the transshipment is requested to occur. The notification to the Administrator and the request to the Pacific Island Party may be identical. The notification and request must include the following information: Name of vessel; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board the vessel

(in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and the date, time (in UTC), and location where such transshipment is requested to occur. The notification to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The request to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

- (6) **Zone entry and exit reports.** Each time the vessel enters or exits the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type (“ZENT” for entry or “ZEXT” for exit); FFA Regional Register number; trip begin date; date and time (in UTC) of the entry or exit; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.
- (7) **Weekly reports.** Each Wednesday while the vessel is within the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type (“WEEK”); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and whether or not there is a vessel observer on board (“Y” or “N”). This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.
- (8) **Port entry reports.** At least 24 hours before the vessel's entry into port of any Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type (“PENT”); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; estimated time (in UTC) of entry into port; port name; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.
- (9) **Transshipment reports.** Upon completion of transshipment of any or all of the fish on board the vessel, a report must be submitted to the Administrator and to the Pacific Island Party in whose jurisdiction the transshipment occurred. The report must include the following information: Report type (“TRANS”); FFA Regional Register number; trip begin date; date and time (in UTC) of the transshipment; IRCS; vessel position at time of transshipment (latitude and longitude to nearest minute of arc); amount of fish transshipped (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; name of vessel to which the fish were transshipped; and the destination of the transshipped fish. The report to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The report to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(10) **Other reports and notifications to Pacific Island Parties.** Reports and notifications must be submitted to the relevant Pacific Island Parties in each of the circumstances and in the manner described in the subparagraphs of this paragraph. Unless otherwise indicated in this paragraph, the reports must be prepared in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(i) **Australia.**

- (A) Each day while the vessel is within the Australian Fishing Zone, a report must be submitted that includes the following information: Vessel position (latitude and longitude to nearest minute of arc); and the amount of catch made during the previous day, by species.
- (B) At least 24 hours before entering the Australian Fishing Zone, a notification must be submitted that indicates an intent to enter the Australian Fishing Zone.

(ii) **Fiji.**

- (A) Each day while the vessel is in Fiji fisheries waters, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; and vessel position at the time of the report (latitude and longitude to nearest minute of arc).
- (B) Each week while the vessel is in Fiji fisheries waters, a report must be submitted that includes the amount of the catch made during the preceding week, by species.

(iii) **Kiribati.**

- (A) At least 24 hours before entering a Closed Area under the jurisdiction of Kiribati, a notification must be submitted that includes the following information: vessel name; IRCS; vessel position at the time of the report (latitude and longitude to nearest minute of arc); the reason for entering the Closed Area; and the estimated time (in UTC) of entry into the Closed Area (latitude and longitude to nearest minute of arc).
- (B) Immediately upon entry into or exit from a Closed Area under the jurisdiction of Kiribati, a report must be submitted that includes the following information: report type ("CAENT" for entry or "CAEXT" for exit); the number of the vessel's license issued under § 300.32; IRCS; date and time (in UTC) of the report; vessel position (latitude and longitude to nearest minute of arc); amount of the catch on board the vessel, by species; and status of the boom ("up" or "down"), net ("deployed" or "stowed"), and skiff ("deployed" or "stowed").
- (C) At least 24 hours prior to fueling the vessel from a tanker in the area of jurisdiction of Kiribati, a report must be submitted that includes the following information: report type ("SBUNK"); the number of the vessel's license issued under § 300.32; IRCS; trip start date; name of port from which trip started; amount of the catch on board the vessel, by species; estimated time of bunkering; estimated position of bunkering (latitude and longitude to nearest minute of arc); and name of tanker.
- (D) After fueling the vessel from a tanker in the area of jurisdiction of Kiribati, but no later than 12 noon local time on the following day, a report must be submitted that includes the following information: report type ("FBUNK"); the number of the vessel's license issued under § 300.32; IRCS; start time of bunkering; end time of bunkering; amount of fuel received, in kiloliters; and name of tanker.

(iv) ***New Zealand.***

- (A) At least 24 hours before entering the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: name of vessel; IRCS; position of point of entry into the exclusive economic zone of New Zealand (latitude and longitude to nearest minute of arc); amount of catch on board the vessel, by species; and condition of the catch on board the vessel ("fresh" or "frozen").
- (B) For each day that the vessel is in the exclusive economic zone of New Zealand, a notification must be submitted no later than noon of the following day of the vessel's position (latitude and longitude to nearest minute of arc) at noon.
- (C) For each week or portion thereof that the vessel is in the exclusive economic zone of New Zealand, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Wednesday (local time). The report must include the amount of the catch taken in the exclusive economic zone of New Zealand during the reporting period.
- (D) At least 10 days prior to an intended transshipment in an area under the jurisdiction of New Zealand, a notification must be submitted that includes the intended port, date, and time of transshipment.
- (E) At least 24 hours prior to exiting the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: position of the intended point of exit (latitude and longitude to nearest minute of arc); the amount of catch on board the vessel, by species; and condition of the catch on board the vessel ("fresh" or "frozen").

(v) ***Solomon Islands.***

- (A) At least 24 hours prior to entry into Solomon Islands Fisheries Limits, a report must be submitted that includes the following information: expected vessel position (latitude and longitude to nearest minute of arc) and expected date and time of entry.
- (B) For each week or portion thereof that the vessel is in the exclusive economic zone of Solomon Islands, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Tuesday (local time). The report must include the amount of the catch taken and the number of fishing days spent in the exclusive economic zone of Solomon Islands during the reporting period.

(vi) ***Tonga.***

- (A) Each day while the vessel is in the exclusive economic zone of Tonga, a report must be submitted that includes the vessel's position (latitude and longitude to nearest minute of arc).
- (B) [Reserved]

(vii) ***Tuvalu.***

- (A) At least 24 hours prior to entering Tuvalu fishery limits, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; the number of the vessel's license issued under § 300.32; intended vessel position (latitude and longitude to nearest minute of arc) at entry; and amount of catch on board the vessel, by species.
- (B) Every seventh day that the vessel is in Tuvalu fishery limits, a report must be submitted that includes vessel position (latitude and longitude to nearest minute of arc) and the total amount of catch on board the vessel.
- (C) Immediately upon exit from Tuvalu fishery limits, a notification must be submitted that includes vessel position (latitude and longitude to nearest minute of arc) and the total amount of catch on board the vessel.

[72 FR 6151, Feb. 9, 2007]

§ 300.35 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 Food and Agricultural Organization standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

- (a) On both sides of the vessel's hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with the background extending to provide a border around the mark of not less than 16.7 cm.
- (b) On the vessel's deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high, and having a stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm.
- (c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

§ 300.36 Closed area stowage requirements.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

§ 300.37 Radio monitoring.

The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

§ 300.38 Prohibitions.

- (a) Except as provided for in § 300.39, in addition to the prohibitions in § 300.4, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:
 - (1) To violate the Act or any provision of any regulation or order issued pursuant to Act.
 - (2) To use a vessel for fishing in violation of an applicable national law.
 - (3) To violate the terms and conditions of any fishing arrangement to which that person is a party.
 - (4) To use a vessel for fishing in any Closed Area.
 - (5) To refuse to permit any authorized officer or authorized party officer to board a fishing vessel for purpose of conducting a search or inspection in connection with the enforcement of the Act or the Treaty.
 - (6) To refuse to comply with the instructions of an authorized officer or authorized party officer relating to fishing activities under the Treaty.
 - (7) To refuse to permit an authorized inspector full access to any place where fish taken in the Licensing Area is unloaded.
 - (8) To refuse to allow an authorized inspector to remove samples of fish from a vessel that fished in the Licensing Area.
 - (9) To forcibly assault, resist, oppose, impede, intimidate, or interfere with:
 - (i) Any authorized officer, authorized party officer or authorized inspector in the conduct of a search or inspection in connection with the enforcement of these regulations, the Act or the Treaty; or
 - (ii) An observer in the conduct of observer duties under the Treaty.
 - (10) To transship fish on board a vessel that fished in the Licensing Area, except in accordance with the requirements of § 300.46.
 - (11) To fail to have installed, allow to be programmed, carry, or have operational a VMS unit while in the Treaty Area as specified in § 300.45(a).
 - (12) To fail to activate a VMS unit, to interrupt, interfere with, or impede the operation of a VMS unit, to tamper with, alter, damage, or disable a VMS unit, or to move or remove a VMS unit without prior notification as specified in § 300.45(e).
 - (13) In the event of a VMS unit failure or breakdown or interruption of automatic position reporting in the Treaty Area, to fail to submit manual position reports as specified in § 300.45(f).
 - (14) In the event of a VMS unit failure or breakdown or interruption of automatic position reporting in the Treaty Area and if directed by the Administrator or an authorized officer, to fail to stow fishing gear or take the vessel to a designated port as specified in § 300.45(f).
 - (15) To fail to repair or replace a VMS unit as specified in § 300.45(h).
- (b) Except as provided for in § 300.39, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area:
 - (1) To use a vessel to fish unless validly licensed as required by the Administrator.

- (2) To use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental bycatch.
- (3) To use a vessel for fishing by any method, except the purse-seine method.
- (4) To use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license.
- (5) To operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels.
- (6) To use a vessel to fish in a manner inconsistent with an order issued by the Secretary under § 300.42 (section 11 of the Act).
- (7) Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use aircraft in association with fishing activities of a vessel, unless it is identified on the license application for the vessel, or any amendment thereto.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6153, Feb. 9, 2007]

§ 300.39 Exceptions.

- (a) The prohibitions of § 300.38 and the licensing requirements of § 300.32 do not apply to fishing for albacore tuna by vessels using the trolling method or to fishing by vessels using the longline method in the high seas areas of the Treaty Area.
- (b) The prohibitions of § 300.38(a)(4), (a)(5), and (b)(3) do not apply to fishing under the terms and conditions of a fishing arrangement.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6153, Feb. 9, 2007]

§ 300.40 Civil penalties.

The procedures of 15 CFR part 904 apply to the assessment of civil penalties, except as modified by the requirements of section 8 of the Act.

§ 300.41 Investigation notification.

Upon commencement of an investigation under section 10(b)(1) of the Act, the operator of any vessel concerned shall have 30 days after receipt of notification of the investigation and the operator's rights under section 10(b)(1) to submit comments, information, or evidence bearing on the investigation, and to request in writing that the Secretary provide the operator an opportunity to present the comments, information, or evidence orally to the Secretary or the Secretary's representative.

§ 300.42 Findings leading to removal from fishing area.

- (a) Following an investigation conducted under section 10(b) of the Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel that has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding that:

- (1) The fishing vessel -
 - (i) While fishing in the Licensing Area did not have a license issued under § 300.32 to fish in the Licensing Area, and that under the terms of the Treaty the fishing is not authorized to be conducted in the Licensing Area without such a license.
 - (ii) Was involved in any incident in which an authorized officer, authorized party officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcibly resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by the Act or the Treaty;
 - (iii) Has not made full payment within 60 days of any amount due as a result of a final judgement or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or
 - (iv) Was not represented by an agent for service of process in accordance with the Treaty; or
- (2) There is probable cause to believe that the fishing vessel -
 - (i) Was used in violation of section 5(a)(4), (a)(5), (b)(2), or (b)(3) of the Act;
 - (ii) Used an aircraft in violation of section 5(b)(7) of the Act; or
 - (iii) Was involved in an incident in which section 5(a)(7) of the Act was violated.
- (b) Upon being advised by the Secretary of State that proper notification to Parties has been made by a Pacific Island Party that such Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of that Pacific Island Party, the Secretary shall order the vessel to leave those waters until the Secretary of State notifies the Secretary that the order is no longer necessary.
- (c) The Secretary shall rescind any order issued on the basis of a finding under paragraphs (a)(1) (iii) or (iv) of this section (subsections 11(a)(1) (C) or (D) of the Act) as soon as the Secretary determines that the facts underlying the finding do not apply.
- (d) An order issued in accordance with this section is not subject to judicial review.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6154, Feb. 9, 2007]

§ 300.43 Observers.

- (a) The operator and each member of the crew of a vessel shall allow and assist any person identified as an observer under the Treaty by the Pacific Island Parties:
 - (1) To board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary.
 - (2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel's records, including its log and documentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area.
 - (3) To disembark at the point and time notified by the Pacific Island Parties to the Secretary.

- (4) To carry out observer duties safely.
- (b) The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation and medical facilities of reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

§ 300.44 Other inspections.

The operator and each member of the crew of any vessel from which any fish taken in the Licensing Area is unloaded or transshipped shall allow, or arrange for, and assist any authorized inspector, authorized party officer, or authorized officer to have full access to any place where the fish is unloaded or transshipped, to remove samples, to have full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying, and to gather any other information relating to fisheries in the Licensing Area without interfering unduly with the lawful operation of the vessel.

§ 300.45 Vessel Monitoring System.

- (a) **Applicability.** Holders of vessel licenses issued under § 300.32 are required, in order to have the licensed vessel in the Treaty Area, to:
 - (1) Have installed a VMS unit on board the licensed vessel;
 - (2) Allow the Administrator, its agent, or a person authorized by the Administrator to program the VMS unit to transmit position and related information to the Administrator;
 - (3) If directed by the Regional Administrator, allow NMFS, its agent, or a person authorized by NMFS to program the VMS unit to transmit position and related information to NMFS; and
 - (4) Carry and have operational the VMS unit at all times while in the Treaty Area, except as provided in paragraphs (f) and (g) of this section.
- (b) **FFA Vessel Register.** Purse seine vessels must be in good standing on the FFA Vessel Register maintained by the Administrator in order to be licensed under the Treaty. FFA Vessel Register application forms may be obtained from the Regional Administrator or the Administrator or from the FFA Web site: <http://www.ffa.int>. Purse seine vessel owners or operators must submit completed FFA Vessel Register applications to the Regional Administrator for transmittal to the Administrator and pay fees for registration of their vessel(s) on the FFA Vessel Register annually. The vessel owner or operator may submit a completed FFA Vessel Register application form at any time, but the application must be received by the Regional Administrator at least seven days before the first day of the next licensing period to avoid the potential lapse of the registration and license between licensing periods.
- (c) **VMS unit installation.** A VMS unit required under this section must be installed by a person authorized by the Administrator. A list of Administrator-authorized VMS unit installers may be obtained from the Regional Administrator or the Administrator.
- (d) **Hardware and software specifications.** The VMS unit installed and carried on board a vessel to comply with the requirements of this section must consist of hardware and software that is approved by the Administrator and approved by NMFS. A current list of hardware and software approved by the Administrator may be obtained from the Administrator. A current list of hardware and software approved by NMFS may be obtained from NMFS.

- (e) **Service activation.** Other than when in port or in a shipyard and having given proper notification to the Administrator as specified in paragraph (g) of this section, the owner or operator of a vessel licensed under § 300.32 must, when the vessel is in the Treaty Area:
- (1) Activate the VMS unit on board the licensed vessel to transmit automatic position reports;
 - (2) Ensure that no person interrupts, interferes with, or impedes the operation of the VMS unit or tampers with, alters, damages, or disables the VMS unit, or attempts any of the same; and
 - (3) Ensure that no person moves or removes the VMS unit from the installed position without first notifying the Administrator by telephone, facsimile, or e-mail of such movement or removal.
- (f) **Interruption of VMS unit signal.** When a vessel owner or operator is notified by the Administrator or an authorized officer that automatic position reports are not being received, or the vessel owner or operator is otherwise alerted or aware that transmission of automatic position reports has been interrupted, the vessel owner and operator must comply with the following:
- (1) The vessel owner or operator must submit manual position reports that include vessel name, call sign, current position (latitude and longitude to the nearest minute), date, and time to the Administrator by telephone, facsimile, or e-mail at intervals of no greater than eight hours or a shorter interval if and as specified by the Administrator or an authorized officer. The reports must continue to be submitted until the Administrator has confirmed to the vessel owner or operator that the VMS unit is properly transmitting position reports. If the manual position reports cannot be made, the vessel operator or owner must notify the Administrator of such as soon as possible, by any means possible.
 - (2) If directed by the Administrator or an authorized officer, the vessel operator must immediately stow the fishing gear in the manner described in § 300.36, take the vessel directly to a port designated by the Administrator or authorized officer, and notify the Administrator by telephone, facsimile, or e-mail as soon as possible that the vessel is being taken to port with fishing gear stowed.
- (g) **Shutdown of VMS unit while in port or in shipyard.** When a vessel is in port and not moving, the VMS unit may be shut down, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the vessel is in port and of the intended shutdown, and only as long as manual position reports as described in paragraph (f)(1) of this section are submitted to the Administrator at intervals of no greater than 24 hours or a shorter interval if and as specified by the Administrator or an authorized officer. If the VMS unit is shut down while the vessel is in port, the vessel owner or operator must notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel's departure from port. When the vessel is in a shipyard, the VMS unit may be shut down and the submission of manual position reports is not required, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the vessel is in the shipyard and of the intended VMS unit shutdown. If the VMS unit is shut down while the vessel is in a shipyard, the vessel owner or operator must notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel's departure from the shipyard.
- (h) **VMS unit repair and replacement.** After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must have the VMS unit repaired or replaced prior to the vessel's next trip. If the VMS unit is replaced, the new VMS unit must be installed by an Administrator-authorized VMS unit installer, as specified in paragraph (c) of this section. In making such repairs or replacements, conformity with the current requirements must be met before the vessel may lawfully operate under the Treaty.

- (i) **Access to data.** As a condition to obtaining a license, holders of vessel licenses issued under § 300.32 must allow the Regional Administrator, an authorized officer, the Administrator or an authorized party officer or designees access to the vessel's position data obtained from the VMS unit at the time of, or after, its transmission to the vendor or receiver.

[72 FR 6154, Feb. 9, 2007, as amended at 75 FR 74648, Dec. 1, 2010]

§ 300.46 Transshipping requirements.

- (a) **Applicability.** This section applies to vessels licensed under § 300.32.
- (b) Transshipping may only be done at the time and place authorized for transshipment by the Pacific Island Parties, following the notification and request requirements of § 300.34(c)(5).
- (c) The operator and each member of the crew of a vessel from which any fish taken in the Licensing Area is transshipped must:
 - (1) Allow and assist any person identified as an officer of the Pacific Island Party to:
 - (i) Have full access to the vessel and any place where such fish is being transshipped and the use of facilities and equipment that the officer may determine is necessary to carry out his or her duties;
 - (ii) Have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;
 - (iii) Remove samples;
 - (iv) Have full access to the vessel's records, including its log and documentation, for the purpose of inspection and copying; and
 - (v) Gather any other information required to fully monitor the activity without interfering unduly with the lawful operation of the vessel; and
 - (2) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with any person identified as an officer of the Pacific Island Party in the performance of his or her duties.
- (d) Transshipping at sea may only be done:
 - (1) In a designated area in accordance with such terms and conditions as may be agreed between the operator of the vessel and the Pacific Island Party in whose jurisdiction the transshipment is to take place;
 - (2) In accordance with the requirements of § 300.34; and
 - (3) If the catch is transshipped to a carrier vessel duly authorized in accordance with national laws.

[72 FR 6155, Feb. 9, 2007]