

issued pursuant to § 665.4(f)(1), in violation of § 665.15(f)(2).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 0808051054-1319-02]

RIN 0648-AW67

Western Pacific Pelagic Fisheries; Prohibiting Longline Fishing Within 30 nm of the Northern Mariana Islands

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

ACTION: Final rule.

SUMMARY: This final rule prohibits pelagic longline fishing within approximately 30 nautical miles (nm) of the islands of the Commonwealth of the Northern Mariana Islands (CNMI). By establishing a longline fishing prohibited area around the CNMI, NMFS intends to reduce the potential for nearshore localized fish depletion from longline fishing, and to limit catch competition and gear conflicts between the CNMI-based longline and trolling fleets. This rule also makes several administrative clarifications to the pelagic fishing regulations.

DATES: This final rule is effective July 27, 2011.

ADDRESSES: The background on this final rule may be found in the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (FEP) and FEP Amendment 2, which are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, <http://www.wpcouncil.org>. Amendment 2 may also be found at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Toby Wood, NMFS PIR Sustainable Fisheries, 808-944-2234.

SUPPLEMENTARY INFORMATION: Pelagic fisheries in the U.S. western Pacific are managed under the FEP. In Amendment 2, the Council recommended that NMFS prohibit purse seine fishing in the U.S. EEZ around the Mariana Archipelago, including the CNMI and Guam, and prohibit pelagic longline fishing within 30 nm (approx. 56 km) of the CNMI. The recommended prohibition on purse

seine fishing was intended to limit impacts on juvenile recruitment of bigeye tuna, and reduce the potential for localized depletion and catch competition between purse seine vessels and the pelagic fishing fleets of the CNMI and Guam. The recommended longline closed area near the CNMI was intended to minimize potential gear conflicts and catch competition between the local pelagic trolling fleet and the developing CNMI-based longline fishery (a 50-nm (93 km) longline prohibited area currently exists around Guam to prevent gear conflicts).

Additional background information on this final rule is found in the preamble to the proposed rule published on March 31, 2011 (76 FR 17811); the comment period ended on May 16, 2011. NMFS received two substantive comments, and responds as follows:

Comment 1: The longline prohibited area around the CNMI should be increased to 90 nm (167 km) from the proposed 30 nm to further protect marine life and seafood resources in the region.

Response: U.S. longline fishing in the Pacific is regulated stringently to minimize impacts on protected species and harvest fish sustainably. Requirements for this fishery include permits, specific gear configuration and identification, area restrictions monitored by a satellite vessel monitoring system, observer placement when requested, educational workshops, and reporting requirements for fishing activities and interactions with protected resources, and others.

The Council and NMFS assessed the potential impacts of longline prohibited areas ranging in size from 25 to 100 nm (46 to 185 km) around the CNMI, and concluded that a 30-nm zone best achieved the conservation and management objectives of the proposed amendment, while at the same time minimizing economic costs and ensuring sustained participation by fishermen. The 30-nm prohibited area encompasses the majority of the submarine habitat containing banks and reefs where small boats typically concentrate their fishing efforts. Excluding longline fishing from this zone will prevent gear conflicts and competition for catches between the small boats and larger longliners, and will reduce the likelihood of longline gear entanglement on the banks and reefs, thereby protecting reefs and the marine life that depends on it.

Larger prohibited areas would impose higher travel costs to the longline vessels with little to no additional benefit of conserving stocks of pelagic

fish or protected resources, or minimizing the potential for gear conflicts with the small boat fishery. A 30-nm prohibited area is not so large as to prevent longline fishing activity, which will allow for the development of the longline fishery and provide economic benefits to the CNMI.

Comment 2: There is little demonstrated need or justification for the proposed prohibition on purse seine fishing because there is virtually no history of purse seine fishing in the Mariana Archipelago, and there is little evidence that purse seine fishing negatively impacts other pelagic fisheries in the area. Also, an EEZ closure will disadvantage the United States in its negotiations to renew the South Pacific Tuna Treaty, as the proposed prohibition on purse seine fishing in the U.S. EEZ might encourage other Pacific Island parties to take similar protective measures in their national waters.

Response: NMFS agrees, and this final rule will not implement the proposed prohibition on purse seine fishing in the EEZ around the Mariana Archipelago. Under the Magnuson-Stevens Act, NMFS may partially approve a plan or amendment to the FEP offered by the Council. When partially approving an amendment, NMFS must specify the applicable law with which the amendment is inconsistent, explain the nature of the inconsistency, and recommend to the Council actions it could take to conform the amendment to the applicable law.

The Magnuson-Stevens Act requires NMFS to consider ten National Standards when implementing fishery conservation and management measures. National Standard 2 requires such measures to be based on the best scientific information available, and requires fishery management actions to be founded on thorough analyses that allow NMFS to rationally conclude that the selected alternative will accomplish legitimate conservation and management objectives. The scientific analysis in Amendment 2 presented inconclusive evidence of a negative impact of purse seine fishing on other fisheries and fish stocks, with the possible exception of some localized impacts on trolling catch rates over small distances near American Samoa. Nonetheless, the Council recommended prohibiting U.S. purse seine fishing throughout the entire EEZ around the Mariana Archipelago. That recommendation is not supported by the best available scientific evidence on the need to reduce interactions between the purse seine and local trolling fisheries in the area around the CNMI, and is,

therefore, inconsistent with National Standard 2. Accordingly, NMFS did not approve the proposed purse seine prohibition, and it is not part of this final rule. The Council may revisit the issue if activities by U.S. purse seine vessels change, or if new scientific information is presented.

Changes From the Proposed Rule

The proposed rule contained provisions that would have defined purse seine fishing and prohibited purse seine fishing within the EEZ around Guam and the CNMI. Those provisions were not approved, so the final rule does not include the definition or prohibition on purse seine fishing. The final rule does implement the Council's recommended prohibited area for longline fishing around the CNMI. This final rule also makes administrative changes to the pelagic fishing regulations: all pelagic fishing prohibited areas (existing longline prohibited areas in Hawaii and Guam, the American Samoa large vessel prohibited areas, and the new CNMI longline prohibited area) are combined into 50 CFR 665.806.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that the part of Amendment 2 that pertains to a prohibited area for pelagic longline fishing in the CNMI is necessary for the conservation and management of CNMI pelagic fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. Although this final rule does not implement all of the proposed measures, the determination in the proposed rule that this final action will not have a significant economic effect on a substantial number of small entities remains unchanged. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Fisheries, Fishing, Longline,

Northern Mariana Islands, Prohibited areas.

Dated: June 21, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

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

■ 2. In § 665.802, revise paragraphs (v) and (xx) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(v) Use longline gear to fish within a longline fishing prohibited area in violation of § 665.806, except as allowed pursuant to an exemption issued under §§ 665.17 or 665.807.

* * * * *

(xx) Use a large vessel to fish for western Pacific Pelagic MUS within an American Samoa large vessel prohibited area in violation of § 665.806, except as allowed pursuant to an exemption issued under §§ 665.17 or 665.818.

* * * * *

■ 3. Revise § 665.806 to read as follows:

§ 665.806 Prohibited area management.

(a) *Longline fishing prohibited areas.* Longline fishing is prohibited in the longline fishing prohibited areas as defined in paragraphs (a)(1) through (a)(4) of this section.

(1) *NWHI protected species zone.* The NWHI protected species zone is the portion of the EEZ within 50 nm of the center geographical positions of certain islands and reefs in the NWHI, as follows:

Name	N. lat.	W. long.
Nihoa Island	23°05'	161°55'
Necker Island	23°35'	164°40'
French Frigate Shoals	23°45'	166°15'
Gardner Pinnacles	25°00'	168°00'
Maro Reef	25°25'	170°35'
Laysan Island	25°45'	171°45'
Lisianski Island	26°00'	173°55'
Pearl and Hermes Reef	27°50'	175°50'
Midway Island	28°14'	177°22'
Kure Island	28°25'	178°20'

Name	N. lat.	W. long.
Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, delimit the remainder of the NWHI longline protected species zone.		

(2) *Main Hawaiian Islands (MHI).* (i) From February 1 through September 30 each year, the MHI longline fishing prohibited area is the portion of the EEZ around Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05'	155°40'
B	18°20'	156°25'
C	20°00'	157°30'
D	20°40'	161°40'
E	21°40'	161°55'
F	23°00'	161°30'
G	23°05'	159°30'
H	22°55'	157°30'
I	21°30'	155°30'
J	19°50'	153°50'
K	19°00'	154°05'
A	18°05'	155°40'

(ii) From October 1 through the following January 31 each year, the MHI longline fishing prohibited area is the portion of the EEZ around Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05'	155°40'
L	18°25'	155°40'
M	19°00'	154°45'
N	19°15'	154°25'
O	19°40'	154°20'
P	20°20'	154°55'
Q	20°35'	155°30'
R	21°00'	155°35'
S	22°30'	157°35'
T	22°40'	159°35'
U	22°25'	160°20'
V	21°55'	160°55'
W	21°40'	161°00'
E	21°40'	161°55'
D	20°40'	161°40'
C	20°00'	157°30'
B	18°20'	156°25'
A	18°05'	155°40'

(3) *Guam.* The Guam longline fishing prohibited area is the portion of the EEZ around Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°25'	144°00'

Point	N. lat.	E. long.
B	14°00'	143°38'
C	13°41'	143°33'33"
D	13°00'	143°25'30"
E	12°20'	143°37'
F	11°40'	144°09'
G	12°00'	145°00'
H	13°00'	145°42'
I	13°27'	145°51'

(4) *CNMI*. The CNMI longline fishing prohibited area is the portion of the EEZ around the CNMI bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°00'	144°34'
B	15°49'	145°29'
C	16°21'	145°06'
D	17°03'	145°22'
E	19°07'	145°09'
F	20°39'	144°19'
G	21°04'	145°06'
H	19°19'	146°04'
I	16°00'	146°32'
J	13°32'	145°32'
A	14°00'	144°34'

(b) *American Samoa large vessel prohibited areas*. A large vessel of the United States may not be used to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited

areas as defined in paragraphs (b)(1) and (b)(2) of this section, except as allowed pursuant to an exemption issued under § 665.818.

(1) *Tutuila Island, Manua Islands, and Rose Atoll (AS-1)*. The Tutuila Island, Manua Islands, and Rose Atoll large vessel prohibited area is the portion of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long.
AS-1-A	13°30'	167°25'
AS-1-B	15°13'	167°25'

and from Point AS-1-A westward along the latitude 13°30' S. until intersecting the U.S. EEZ boundary with Samoa, and from Point AS-1-B westward along the latitude 15°13' S. until intersecting the U.S. EEZ boundary with Samoa.

(2) *Swains Island (AS-2)*. The Swains Island large vessel prohibited area is the portion of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long.
AS-2-A	11°48'	171°50'
AS-2-B	11°48'	170°20'

and from Point AS-2-A northward along the longitude 171°50' W. until intersecting the U.S. EEZ boundary with Tokelau, and from Point AS-2-B northward along the longitude 170°20' W. until intersecting the U.S. EEZ boundary with Tokelau.

■ 4. Revise the section heading in § 665.807 to read as follows:

§ 665.807 Exemptions for Hawaii longline fishing prohibited areas; procedures.

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§ 665.817 [Removed and Reserved]

■ 5. Remove and reserve § 665.817.
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