

Dated: July 26, 2001.

Wanda Cain,

Acting Deputy Director, Office Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 072301D]

Magnuson-Stevens Act Provisions; Essential Fish Habitat; Public Meeting

AGENCY: North Pacific Fishery Management Council (NPFMC) and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of public meeting.

SUMMARY: The NPFMC will hold an essential fish habitat (EFH) committee meeting to review NMFS draft summary of EFH scoping comments, to identify significant issues and preliminary alternatives, and to determine staffing needs.

DATES: The EFH committee will meet at 12:30 p.m. to 5 p.m. on Monday, August 13, 2001, and at 9 a.m. to 5 p.m. on Tuesday, August 14, 2001.

ADDRESSES: The committee will meet in Sitka, Alaska, at the Northern Southeast Regional Aquaculture Association (NSRAA), 1308 Sawmill Creek Road, in the conference room.

Questions should be addressed to NMFS, Habitat Conservation Division, ATTN: Cindy Hartmann, 709 West 9th, Suite 461, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586-7585, e-mail: Cindy.Hartmann@noaa.gov; or Cathy Coon, North Pacific Fishery Management Council (NPFMC), (907) 271-2809, e-mail: Cathy.Coon@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The NPFMC EFH committee was formally established by the NPFMC's acting executive director in May 2001. The committee was established in response to the need to prepare a supplemental environmental impact statement (SEIS) for the EFH fishery management plan amendments. For further information about the SEIS, see

the notice of intent to prepare an SEIS published in the Proposed Rules section of the Federal Register (66 FR 30396, June 6, 2001).

The function of the committee is to serve as a steering committee in facilitating input to NMFS on the supplemental environmental impact statement (SEIS) for EFH submitted by the industry, conservation community, Council, and general public and the involvement of the NPFMC in the SEIS. More specifically, the Committee will assist in identifying (1) the significant issues used to evaluate proposed alternatives, (2) the alternatives for designating EFH, (3) the alternatives for mitigating fishing gear impacts on habitat, and (4) alternative criteria and approaches that could be used to designate and manage habitat areas of particular concern, and staffing needs for EFH SEIS. The Committee will work to coordinate efforts among the various technical teams, provide input, as appropriate, and submit periodic updates to the Council on the EIS for EFH. The EFH Committee had its first meeting on May 30, 2001, the August meeting will be its second meeting.

Although other issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586-7235, at least 5 working days prior to the meeting date.

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

Dated: July 26, 2001

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010710171-1171-01; I.D. 051401B]

RIN 0648-AL41

Fisheries off West Coast States and in the Western Pacific; Pelagic Fisheries; Prohibition on Fishing for Pelagic Management Unit Species; Nearshore Area Closures Around American Samoa by Vessels More Than 50 Feet in Length

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule which would prohibit certain vessels from fishing for Pacific pelagic management unit species (PMUS) within nearshore areas approximately 50 nautical miles (nm) around the islands of American Samoa. This prohibition would apply to vessels that measure more than 50 ft (15.2 m) in overall length and that did not land PMUS prior to November 13, 1997. This action is being proposed and is intended to address concerns that the entry of vessels greater than 50 ft (15.2 m) in length into the pelagic fishery around American Samoa could lead to gear conflicts and catch competition with locally based small fishing vessels. Such conflicts and competition could lead to reduced opportunities for sustained participation by residents of American Samoa in the small-scale pelagic fishery.

DATES: Comments on this proposed rule will be accepted through September 14, 2001.

ADDRESSES: Written comments on this proposed rule must be mailed to Dr. Charles Karnella, Administrator Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd. Suite 1101, Honolulu, HI 96822 or sent via facsimile (fax) to 808-973-2941. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Council's background document on the proposed action and accompanying environmental assessment/initial regulatory flexibility analysis (EA/IRFA) are available from Kitty Simonds, Executive Director, Western Pacific Regional Fishery Management Council (Council), 1164 Bishop St, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT:

Contact Alvin Katekaru, PIAO, 808-973-2937.

SUPPLEMENTARY INFORMATION: Fishery participants have expressed concerns that current regulations allow unrestricted fishing in the U.S. exclusive economic zone (EEZ) around American Samoa by U.S. fishing vessels. There are large differences in impacts on fishery resources between the American Samoa small-vessel fishing fleet and large fishing vessels (greater than 50 ft (15.2 m) in overall length) that would be prohibited from fishing for PMUS in the closed areas that would be established by the proposed rule. Large pelagic longline fishing vessels have much greater fishing power, as they use two to three times the number of hooks, have longer longlines, have longer soak times (length of time that the longline is left in the water for fishing purposes), and possess greater hold capacity. There are approximately 60 small vessels (less than 50 ft (15.2 m) in length) in American Samoa that use relatively simple troll and longline fishing gear to target PMUS. The majority of pelagic troll fishing activity occurs within 20 nm of shore; the local small vessel longline fleet ranges out to about 50 nm. Based on historical data, the majority of the fishing effort by the local small-vessel fleet takes place to the south and east of the main island of Tutuila. Large pelagic longline, tuna purse seine, and albacore troll vessels, which comprise much of the domestic tuna fishing fleet, are highly mobile. This mobility enables them to seek new fishing opportunities in the central and western Pacific waters as other domestic fisheries become increasingly restricted. An influx of these large vessels into the nearshore waters surrounding American Samoa could lead to gear conflicts, catch competition, and reduced opportunities for sustained fishery participation by the locally based small boat operators. Local fishermen and associated fishing communities depend on this fishery not only for food, income, and employment, but also for the preservation of the Samoan culture.

The average annual catch of skipjack tuna by a U.S. tuna purse seiner operating in the central and western Pacific between 1990 and 1997 was 3,161 mt (6,970,231 lb.) and a typical 65-foot (19.8 m) Hawaii-based longliner, which sets 1,200 to 1,500 hooks per day, has an average annual catch of 113.4 mt (250,000 lb). In comparison, a typical American Samoa small-scale longline vessel sets 200 to 500 hooks per day and catches an average of 15.9 mt (35,000 lb) of fish per

year. In addition to the potential for catch competition, physical gear conflicts between small vessels and large longliners are possible if the large vessels were to set 48.3 km (30 mi) of mainline (the Hawaii average) within 50 nm from the shore of American Samoa.

In response to these concerns, at its June 2000 meeting, the Council recommended a change to the regulations implementing the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagic FMP). Specifically, the Council recommended closing the area approximately 50 nm around American Samoa to large vessels fishing for PMUS. A description of the proposed area closures was circulated to interested parties prior to the Council's decision to make this recommendation. The Council specifically requested that NMFS solicit comments on whether tuna purse seiners should be exempt from the proposed prohibitions and to consider exempting them in the final rule.

Under this proposed rule, U.S. vessels more than 50 ft (15.2 m) in overall length, hereafter referred to as \geq large vessels \geq , would be prohibited from fishing for PMUS within areas approximately 50 nm of the islands of American Samoa. The boundaries of the proposed closed areas would be defined by latitude and longitude and would be delineated as straight lines drawn point to point, instead of 50-nm contours, to facilitate enforcement and to clearly demarcate the boundary for the public. The current owner of a longline vessel that was used (i.e., used by any person, not necessarily the current owner) to make at least one landing of PMUS in American Samoa on or before November 13, 1997, would be exempt from the proposed prohibition. Exemptions could be registered for use with other vessels owned by the same person; however, exemptions could not be applied to a replacement vessel that is larger than the vessel for which it was originally issued. If more than one person (e.g., a partnership or corporation) owned a large vessel when it was registered for use with a general longline permit and made at least one landing of a PMUS prior to November 13, 1997, an exemption would be issued to only one person.

At the Council's November 2000 meeting, Council members representing American Samoa requested the Council to consider an additional exemption to the proposed area closures for U.S. tuna purse seine vessels. The Council believes that such an exemption would likely have minimal direct impact on small fishing vessels or provide little

benefit to the purse seiners because fishery data indicate that no more than ten tuna purse seine sets were made within American Samoa's EEZ (and probably outside the proposed closed areas) during the past decade. However, the exclusion of U.S. tuna purse seine vessels from the nearshore areas could set a negative precedent and encourage other Pacific island nations, in whose EEZs the U.S. tuna purse seine fleet currently fishes, to similarly constrain fishing opportunities for U.S. domestic tuna purse seine vessels. NMFS specifically requests public comments on this issue.

Classification

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

The Council prepared an IRFA that describes the impact this proposed rule would have on small entities, if adopted. A summary of the IRFA follows:

A description of the reasons why action by the agency is being considered and the objectives of the action are explained in the Summary and Supplemental Information sections of this preamble and are not repeated here. This action does not contain reporting and recordkeeping requirements or any compliance requirements that would impact small entities. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

This rule would impact 73 vessels, including 61 small-scale vessels (less than 50 ft) and 12 large vessels (greater than 50 ft). Both large and small longline vessels affected by this proposed rule are considered to be "small entities" under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of \$3 million dollars.

There may be positive long-term economic impacts to those vessels that are able to fish within 50 nm from shore. These benefits would be based on the ability of small vessels to sustain the fishery, and to develop and utilize technology that would allow them to sell their catch in the fresh albacore market. Fresh albacore can command premium prices (up to \$4.75/lb) as compared to the cannery market (\$1.06/lb) in which they now participate. However, the ability to sell their catch to the fresh albacore market in American Samoa is not pivotal to the success of the small vessels, which is

mainly driven by the canneries. A more realistic price for fresh albacore landed in the U.S. mainland is \$2.25/lb, and at that price, the cost of exporting their catch would likely not generate any greater profit than obtained from the cannery.

According to limited data and anecdotal information, the large vessels comprising the longline fleet are currently fishing in the EEZ at a distance of greater than 50 nm from shore. If this is indeed true, the proposed rule would have no economic impact on those vessels, since the requirement to fish outside 50 nm would not alter their fishing behavior. In addition, if vessel captains and owners exhibit rational economic behavior under these conditions, then it would follow that it is more profitable for these vessels to continue fishing outside, as opposed to inside, the 50 nm line. However, if the limited information is not accurate, there would be added costs to fishing further offshore, e.g., the cost of fuel and food, which may or may not affect vessel profitability. This depends on the relative rates of increase in average revenues versus average costs of fishing further offshore. NMFS staff have spoken to several large vessel fishermen, who attest to the fact that the added costs of fishing offshore beyond the 50 nm boundary are indeed offset by the higher catch rates. Other benefits, including increased safety through elimination of gear conflicts, of establishing closed areas around American Samoa to exclude large pelagic fishing vessels are difficult to quantify, as interactions between pelagic fisheries are difficult to document or model due to limitations of available data, insufficient knowledge of the biology and population dynamics of the resource, and poor understanding of environmental influences. As of June 2001, there were twelve large longliners based in American Samoa, two of which would be exempted from this rule.

The Council, in its desire to mitigate potential adverse impacts from implementation of this framework action, moved to include those large vessels that were historical participants by proposing an exemption which would allow vessels that held permits in the fishery prior to the control date of November 13, 1997, to continue fishing within 50 nm off shore.

The impact of the proposed action on the local tuna canneries in American Samoa is expected to be negligible as a result of excluding a few large longliners, currently based in the islands, from fishing within the closed areas. These vessels would not qualify

for exemptions from the area closure. In 1998, the total amount of albacore tuna (636,000 lb or 288 mt), the target pelagic species landed by large U.S. longline vessels at the canneries, represented less than 1 percent of the total tuna delivered to the canneries. Furthermore, most, if not all, of the albacore catches made by the large longliners were from areas beyond 50 nm from the shore of American Samoa.

The Council rejected an alternative that would have closed waters within 100 nm around American Samoa because the Council determined that the potential negative economic impacts on large vessels would outweigh the possible benefits to the local small-vessel fishing fleet of approximately 30 active vessels fishing generally within 50 nm from shore. The potential costs to large longline vessels prohibited from fishing in the closed areas under this alternative would consist of increased fuel costs and travel time to reach available fishing grounds. On the other hand, the small local fishing vessels, even the newer, larger models, have a limited capacity for storing and chilling fish, which discourages fishing beyond 50 nm due to very low efficiency.

The Council rejected a second alternative that would have closed waters within 50 nm of the islands of Tutuila and Manu'a, Rose Atoll, and within 30 nm of Swains Island because the Council determined that this approach would provide unequal and insufficient protection for small vessels that may choose to fish around Swains Island, as well as for those that may decide, in the future, to be home ported there.

The Council also rejected a third alternative that would have excluded large U.S. pelagic fishing vessels from waters around American Samoa in which the Pelagic FMP already prohibits longline fishing by foreign vessels (an area approximately 20 nm around each island) because the Council determined that such small closed areas would provide insufficient protection for the local small-vessel fishing fleet.

On March 29, 2001, NMFS concluded a formal consultation under section 7 of the Endangered Species Act (ESA) with a biological opinion (BO) stating that the continued operation of the pelagic fisheries in the western Pacific region under the Pelagic FMP is likely to jeopardize the continued existence of green turtles, leatherback turtles, and loggerhead turtles. Although the BO indicates that the non-Hawaii pelagic fisheries, such as those in American Samoa, probably have minimal levels of interaction with ESA listed species, they add to the jeopardy situation. The BO

includes reasonable and prudent alternatives to avoid the likelihood of jeopardy, such as sea turtle handling and resuscitation techniques and regulations governing the non-Hawaii pelagic fisheries to reduce the likelihood of harmful impacts to sea turtles incidentally taken by longline, troll, and handline fishing gear employed by U.S. domestic fishing vessels. Also, the BO requires NMFS (where feasible) to establish an observer program for the non-Hawaii pelagic fisheries.

In an informal consultation for the proposed rule establishing American Samoa closed areas, NMFS will assess whether this proposed rule would be likely to adversely affect sea turtles in ways not contemplated by the March 29, 2001, BO.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: July 24, 2001.

William T. Hogarth,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. Section 660.12 is amended by adding the definition of "Large vessel" and revising the definition of "Length overall (LOA) or length of a vessel" as follows:

§ 660.12 Definitions.

* * * * *

Large vessel means, as used in §§ 660.22, 660.37, and 660.38, any vessel greater than 50 ft (15.2 m) in overall length.

Length overall (LOA) or length of a vessel means, as used in §§ 660.21(i) and 660.22, the horizontal distance, rounded to the nearest foot (with any 0.5 foot or 0.15 meter fraction rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 to this part). "Stem" is the foremost part of the vessel, consisting of a section of

timber or fiberglass, or cast forged or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. "Stern" is the aftermost part of the vessel.

* * * * *

3. In § 660.22, paragraph (uu) is added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(uu) Use a large vessel to fish for Pacific pelagic management unit species within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 660.38.

4. A new § 660.37, under subpart C, is added to read as follows:

§ 660.37 American Samoa pelagic fishery area management.

(a) *Large vessel prohibited areas.* A large vessel of the United States may not be used to fish for Pacific pelagic management unit species in the American Samoa large vessel prohibited areas as defined in paragraphs (b) and (c) of this section, except as allowed pursuant to an exemption issued under § 660.38.

(b) *Tutuila Island, Manu'a Islands, and Rose Atoll.* The large vessel prohibited area around Tutuila Island, the Manu'a Islands, and Rose Atoll consists of the waters of the EEZ around American Samoa bounded by straight lines connecting the following coordinates in the order listed:

Point	S. lat.	W. long.
A	13° 30'	170° 49' 42"
B	13° 30'	167° 30'
C	15° 30'	167° 30'
D	15° 30'	171° 51'

and of the EEZ boundary connecting points D and A.

(c) *Swains Island.* The large vessel prohibited area around Swains Island consists of the waters of the EEZ around American Samoa bounded by straight lines connecting the following coordinates in the order listed:

Point	S. lat.	W. long.
A	10° 38'	170° 40'
B	11° 28'	170° 40'
C	11° 28'	171° 30'
D	10° 38'	171° 30'

and of the EEZ boundary connecting points D and A.

4. A new § 660.38, under subpart C, is added to read as follows:

§ 660.38 Exemptions for American Samoa large vessel prohibited areas.

(a) An exemption will be issued to a person who currently owns a large vessel, to use that vessel to fish for Pacific pelagic management unit species in the American Samoa large vessel prohibited management areas, if he or she had been the owner of that vessel when it was registered for use with a longline general permit and made at least one landing of Pacific pelagic management unit species in American

Samoa on or prior to November 13, 1997.

(b) A landing of Pacific pelagic management unit species for the purpose of this section must have been properly recorded on a NMFS Western Pacific Federal daily longline form that was submitted to NMFS, as required in § 660.14.

(c) An exemption is valid only for a vessel that was registered for use with a longline general permit and landed Pacific pelagic management unit species in American Samoa on or prior to November 13, 1997, or for a replacement vessel of equal or smaller LOA than the vessel that was initially registered for use with a longline general permit on or prior to November 13, 1997.

(d) An exemption is valid only for the vessel for which it is registered. An exemption not registered for use with a particular vessel may not be used.

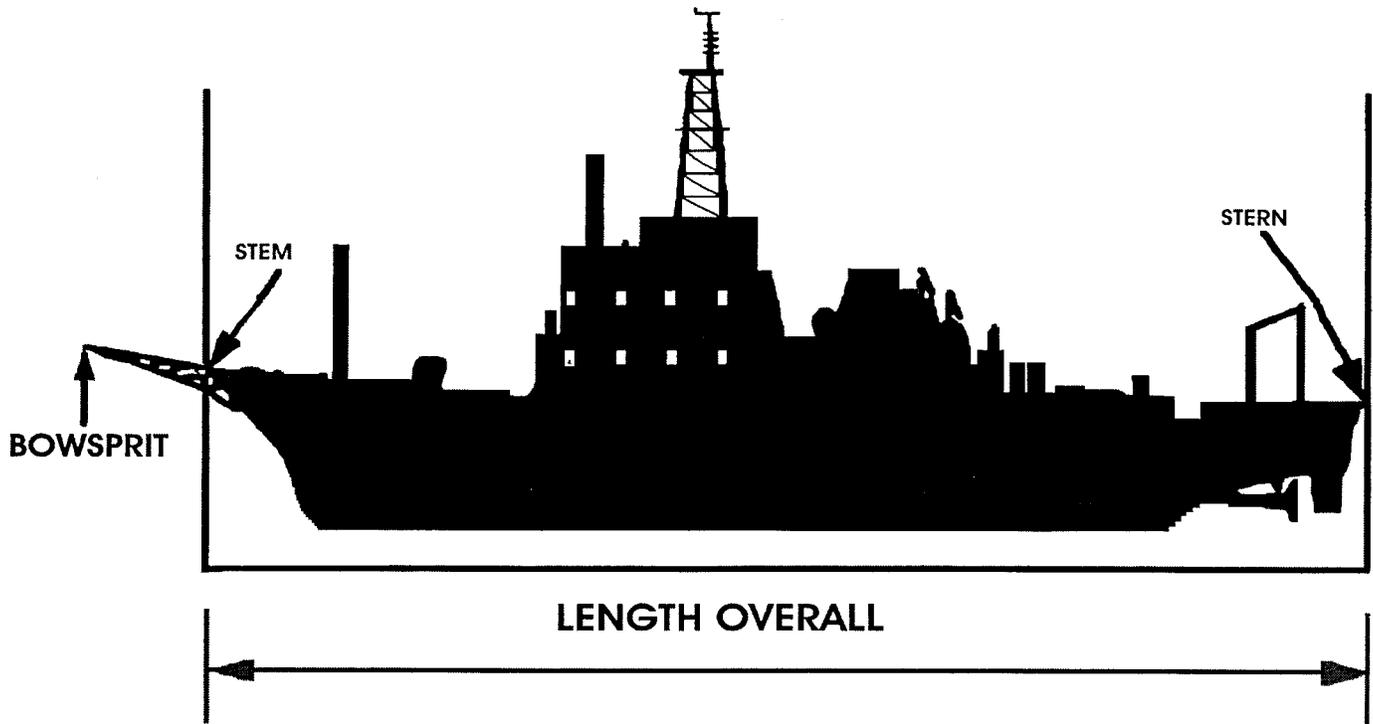
(e) An exemption may not be transferred to another person.

(f) If more than one person, e.g., a partnership or corporation, owned a large vessel when it was registered for use with a longline general permit and made at least one landing of Pacific pelagic management unit species in American Samoa on or prior to November 13, 1997, an exemption issued under this section will be issued to only one person.

5. Figure 2 to part 660 is revised to read as follows:

Figure 2 to Part 660 Subpart C – Length of Fishing Vessel

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