

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 020412086–2086–01; I.D. 010202C]

RIN 0648–AJ08

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagics Fisheries; Pacific Remote Island Areas; Permit and Reporting Requirements for the Pelagic Troll and Handline Fishery

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

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule that would establish Federal permit and reporting requirements for any U.S. fishing vessel that uses troll or handline fishing gear to harvest pelagic management unit species in waters of the U.S. exclusive economic zone (U.S. EEZ) around Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Kingman Reef, Palmyra Atoll, Wake Island and Midway Atoll. These islands are referred to as the Pacific remote island areas (PRIA). The purpose of this proposed rule is to monitor participation in the fishery and to obtain fish catch and fishing effort data (including bycatch data), including interactions with protected species, so that fishery management decisions are based on complete information.

DATES: Comments on this proposed rule will be accepted through June 20, 2002.

ADDRESSES: Send comments to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Copies of background material pertaining to this action may be obtained from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. Suite 1400, Honolulu, HI 96813. Comments will not be accepted if submitted via e-mail or the internet. Send comments on the reporting burden estimate or other aspect of the collection-of-information requirements in this proposed rule to NMFS, PIAO and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808–973–2937.

SUPPLEMENTARY INFORMATION: The collection and analysis of reliable data are needed to assess the status and health of fishery stocks, evaluate the effectiveness of management measures, determine the need for changes in the management regime, prevent overfishing, determine and minimize bycatch, document protected species interactions with fishing gear, and assess the potential impact of fishery interactions. Other than for vessels registered for use with Federal Hawaii longline limited access permits, or Federal Western Pacific longline general permits, there are no specific regulations under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region applicable to vessels targeting pelagic species in the U.S. EEZ waters around the PRIA. The PRIA or “U.S. island possessions in the Pacific” are the distant and mostly uninhabited U.S. islands in the central and western Pacific Ocean consisting of Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll, Palmyra Atoll, and Midway Atoll. Midway Atoll, located in the Northwestern Hawaiian Islands, is not part of the State of Hawaii and is treated as one of the PRIA.

In recent years, several troll and handline fishing vessels from Hawaii have targeted pelagic fish stocks off Palmyra Atoll and Kingman Reef. This expansion of troll and handline fishing activity beyond the Hawaiian Archipelago to the U.S. EEZ around certain PRIA and the lack of any reporting requirements for these fisheries demonstrates the need to put in place reporting procedures in order to collect catch and bycatch data for these fisheries. The proposed establishment of a permit requirement for the PRIA pelagic troll/handline fishery would serve to identify actual or potential participants in the fishery. This would be an “open access” fishery, meaning any U.S. vessel would be eligible to receive a permit.

The Council has recommended the establishment of a reporting requirement for all vessel operators who participate in the PRIA pelagic troll/handline fishery, except at Midway Atoll. They would be required to use a new NMFS fish catch and effort reporting form created especially for the PRIA. At Midway Atoll, troll/handline vessel operators (i.e., charter boat captains), who operate under the Midway Atoll National Wildlife Refuge program, administered by the U.S. Fish and Wildlife Service (FWS), would continue to report their catch and effort data on existing fish catch reporting forms provided by the FWS. NMFS and

FWS will coordinate their efforts to obtain the necessary data from fishermen at Midway Atoll and avoid duplication of reporting regimes.

Under this proposed rule NMFS would require vessel operators, except operators of vessels operating in the U.S. EEZ around Midway Atoll, to submit their catch reports to NMFS within 10 days after the completion of each fishing trip to the U.S. EEZ around the PRIA. The 10-day requirement is to allow vessels to make fish landings at Palmyra Atoll and to potentially conduct another fishing trip enroute to the vessel's homeport. By landing at Palmyra Atoll there would be no need for these vessels to return to their home ports between trips and, in that case, the prompt transmittal of catch reports to NMFS would be infeasible. For this reason NMFS proposes to allow the operators whose vessels are registered for use with PRIA troll/handline pelagic permits an extended reporting window.

The regulatory text for this proposed rule would correct a typographical error in the prohibition on longline fishing within longline fishing areas at § 660.22(i) to reference § 660.27 instead of a redundant reference to § 660.17. Also, a cross reference in § 660.21(l)(1) is revised to comport with the proposed redesignation of paragraphs in § 660.21.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

Based on historical records, it is estimated that two to three vessels from Hawaii, and three Midway Atoll-based vessels have fished in the U.S. EEZ around the PRIA in recent years. Future increases in effort are difficult to predict; however, it appears unlikely that significant expansion in this fishery will occur in the future due to long travel distances to reach the PRIA fishing grounds. It is estimated that there are approximately 5,000 fishing vessels that participate in the pelagic troll and handline fisheries in Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands; however, it is expected that this rule would impact less than 10 of the vessel operators. Further, due to its purely administrative and record keeping nature, this proposed rule would not affect fishing operations directly and would require only relatively minor tasks related to permit application and reporting requirements. The new reporting requirement would be largely similar to the existing requirements for other

areas, which are familiar to the majority of likely fishery participants. Eligibility criteria and application forms for the permit would be the same as those for other Federal western Pacific fishing permits. No fee is associated with the PRIA pelagic troll and handline permit. Estimated total annual cost to respondents for completing permit applications and required reports is \$600 per year. The proposed permitting and reporting demands are considered to be minimal, and, when combined with the small number of individuals likely to be impacted, provide a basis for certification of this action as one not likely to have a significant economic impact on a substantial number of small entities.

As a result, no regulatory flexibility analysis is required for this proposed rule and none has been prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information is estimated at 30 minutes for a permit application and 5 minutes for a daily troll/handline log sheet. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

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

Dated: April 29, 2002.

Rebecca Lent,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended to read 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. In § 660.12, the definitions for “Pelagic handline fishing,” “Pelagic troll fishing,” and “Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean),” are added in alphabetical order to read as follows:

§ 660.12 Definitions.

Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean) means Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll.

Pelagic handline fishing means fishing for pelagic management unit species from a stationary or drifting vessel using hook and line gear other than longline gear.

Pelagic troll fishing (trolling) means fishing for pelagic management unit species from a moving vessel using hook and line gear.

3. In § 660.14, paragraph (a) is revised to read as follows:

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, or 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Administrator as required by this paragraph (a). Each form must be signed and dated by the fishing vessel operator.

(1) The operator of any vessel subject to the requirements of §§ 660.21(a) through (c), 660.41, or 660.81 must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours

of each landing of management unit species.

(2) Except for a vessel that is fishing in the U.S. EEZ around Midway Atoll as specified in paragraph (a)(3) of this section, any operator whose vessel is registered for use with a PRIA pelagic troll and handline fishing permit under § 660.21(d) must submit the original logbook form for each day of fishing within the U.S. EEZ around the PRIA to the Regional Administrator within 10 days of each landing of management unit species.

(3) The operator of a vessel fishing in the U.S. EEZ around Midway Atoll and registered for use with a PRIA pelagic troll and handline fishing permit under § 660.21(d), must submit an appropriate reporting form as required and in a manner specified by the U.S. Fish and Wildlife Service for each day of fishing within the U.S. EEZ around Midway Atoll, which is defined as an area of the Pacific Ocean bounded on the east by 177°10' W. long., on the west by 177°30' W. long., on the north by 28°25' N. lat., and on the south by 28°05' N. lat.

4. In § 660.21, paragraphs (d) through (l) are redesignated as (e) through (m), newly redesignated paragraph (l)(1) is revised, and new paragraph (d) is added to read as follows:

§ 660.21 Permits.

(d) A fishing vessel of the United States must be registered for use with a PRIA pelagic troll and handline fishing permit if that vessel is used to fish for Pacific pelagic management unit species using pelagic handline or trolling fishing methods in the U.S. EEZ around the PRIA.

(l)(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part and in the fishery management plans prepared by the Council, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (l)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information,

unless additional time is needed for a hearing.

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5. In § 660.22, the phrase “U.S. possessions in the Pacific Ocean area” is revised to read “U.S. island possessions in the Pacific Ocean” each place that it appears, paragraph (i) is

revised, and new paragraph (uu) is added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.27.

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(uu) Use a U.S. vessel employing pelagic handline or trolling methods to fish in the U.S. EEZ around the PRIA without a valid PRIA pelagic troll and handline fishing permit registered for use with that vessel.

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