

notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the next 2-month cumulative trip limit period for the Pacific Coast groundfish fishery begins September 1, 2002, and affording prior notice and opportunity for public comment would impede the agency's function of managing fisheries to remain within the OY. The closure for minor nearshore rockfish in this document is a reduction from the status quo and must be implemented immediately to prevent the harvest of minor nearshore rockfish from exceeding its OY for 2002. Delaying implementation of this closure past September 1, 2002, would allow fishers to harvest the higher trip limits that were previously scheduled for the September-October 2-month cumulative period and may cause the catch of minor nearshore rockfish to exceed its OY. For these reasons, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3). This action is taken under the authority of 50 CFR 660.323(b)(1) and is exempt from review under Executive Order 12866.

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

Dated: August 29, 2002.

**Virginia M. Fay,**

*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. 020412086-2194-02; 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:** Final rule.

**SUMMARY:** NMFS issues a final rule that establishes 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 intent of this rule is to monitor participation in the fishery, collect fish catch and fishing effort data (including bycatch data), and obtain information on interactions between fishing gear and protected species. This would enable management decisions for this fishery to be based on the best scientific information available.

**DATES:** This final rule is effective October 4, 2002.

**ADDRESSES:** Copies of a Final Environmental Impact Statement for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FEIS) and the Record of Decision (ROD) for this FEIS are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700. See also <http://swr.nmfs.noaa.gov> to view the FEIS and ROD.

Copies of the regulatory impact review prepared for this action may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1400, Honolulu, HI 96813.

Send comments on the reporting burden estimate or other aspect of the collection-of-information requirements in this final 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). Comments will not be accepted if submitted via e-mail or the internet.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, PIAO, 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 with Federal Western Pacific longline general permits, there are no specific regulations under the Fishery Management Plan for Pelagic Fisheries

of the Western Pacific Region (FMP) 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, although 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 created the need to put reporting procedures in place in order to collect catch and bycatch data for these fisheries. The establishment of a permit requirement for the PRIA pelagic troll/handline fishery serves to identify actual or potential participants in the fishery. This is an "open access" fishery, meaning any U.S. vessel is eligible to receive a permit.

The Council 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 are 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 (USFWS), must continue to report their catch and effort data on existing fish catch reporting forms provided by the USFWS. NMFS and USFWS will coordinate their efforts to obtain the necessary data from fishermen at Midway Atoll and avoid duplication of reporting regimes.

This rule requires 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, these vessels need not 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 allows

the operators whose vessels are registered for use with PRIA troll/handline pelagic permits an extended reporting window.

#### **Changes From the Proposed Rule**

The regulatory text for this rule corrects 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 redesignation of paragraphs in § 660.21.

No comments were received on the proposed rule. Therefore, the final rule contains no substantive changes to the proposed rule.

#### **Clarification**

This final rule includes a clarification affecting the Hawaii-based pelagic longline fishery. NMFS issued a final rule of June 12, 2002, (67 FR 40232), implementing the reasonable and prudent alternative of the March 29, 2001 biological opinion under the Endangered Species Act for the fishery. The June 12, 2002, final rule supplanted and incorporated most of the provisions of an emergency rule first published at 66 FR 31561, June 12, 2001, and extended at 66 FR 63630, December 10, 2001 until June 8, 2002. The preamble to the June 12, 2002, final rule discussed that the final rule would “allow the processing of applications for the re-registration of a vessel that has been deregistered from a Hawaii longline limited access permit after March 29, 2001, only during the month of October and require that applications must be received or post-marked between September 15 and October 15 to allow sufficient time for processing...” The regulatory language that established October as the month for re-registration, as it had appeared in the emergency rule, was inadvertently not included as part of the June 12, 2002, final rule, although regulatory language establishing the application timeframe was included. This clarification reinstates the regulatory language as it appeared in the emergency rule and retains the language of the June 12, 2002, final rule.

#### **Classification**

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

On March 30, 2001, NMFS issued an FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. That analysis includes the pelagic troll and handline fisheries in the PRIA and filed with the

Environmental Protection Agency; a notice of availability was published on April 6, 2001 (66 FR 18243). On May 30, 2002, NMFS issued a Record of Decision that documents the agency's final decision concerning the management of fisheries, including the PRIA pelagic troll and handline fisheries, governed by the FMP. In August 2000, the Council prepared a document analyzing the specific measures in this rule. That analysis is available from the Council (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule 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. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB under OMB Control Numbers 0648–0204 and 0648–0214. 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. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this 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 record keeping requirements.

Dated: August 28, 2002.

**Rebecca Lent,**

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

For the reasons set out in the preamble, 50 CFR part 660 is 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 “Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean)”, “Pelagic handline fishing”, and “Pelagic troll fishing” 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, paragraph (l) is redesignated as paragraph (n), paragraphs (d) through (k) are redesignated as (e) through (l) respectively, newly redesignated

paragraph (l)(1) is revised; and paragraphs (d) and (m) are 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.

\* \* \* \* \*

(m) Except during October, NMFS will not register with a Hawaii longline limited access permit any vessel that is de-registered from a Hawaii longline limited access permit after March 29, 2001.

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 (vv) 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.

\* \* \* \* \*

(vv) 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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