

Dated: September 3, 2008.

**Cheryl A. Oldham,**

*Acting Assistant Secretary for Postsecondary Education.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 070720390-81114-02]

RIN 0648-AV28

#### Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures for the Northern Mariana Islands

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would establish Federal permitting and reporting requirements for all commercial bottomfish vessels fishing in the U.S. Exclusive Economic Zone (EEZ) around the Commonwealth of the Northern Mariana Islands (CNMI). The proposed rule would also close certain EEZ waters around the CNMI to bottomfish fishing by vessels over 40 ft (12.2 m) long. Vessel monitoring system units would be installed on these vessels, and the operators of these vessels would be required to submit Federal sales reports in addition to catch reports. This proposed rule is intended to ensure adequate collection of information about the CNMI commercial bottomfish fishery, provide for sustained community participation, and maintain a consistent supply of locally-caught bottomfish to CNMI markets and seafood consumers. Combined, these measures are intended to prevent the depletion of bottomfish stocks in the CNMI, and to sustain the fisheries that depend on them.

**DATES:** Comments on this proposed rule must be received by October 23, 2008.

**ADDRESSES:** Comments on the amendment, identified by 0648-AV28, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov); or

• Mail: William L. Robinson, Regional Administrator, NMFS, Pacific

Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

**Instructions:** All comments received are a part of the public record and will generally be posted to [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (if you wish to remain anonymous, enter "NA" in the required name and organization fields). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP) and proposed Amendment 10 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, or [www.wpcouncil.org](http://www.wpcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Bob Harman, NMFS PIR, 808-944-2271.

**SUPPLEMENTARY INFORMATION:** This **Federal Register** document is also accessible at the Office of the **Federal Register** web site [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr).

The bottomfish fishery around the Northern Mariana Islands is managed under the Bottomfish FMP, which was developed by the Council, and approved and implemented by NMFS. The Council has submitted Bottomfish FMP Amendment 10 to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule would implement the management provisions recommended in Amendment 10, if the amendment is approved by the Secretary of Commerce.

CNMI nearshore areas have been fished for years by bottomfish fishermen who engage in a mix of subsistence, recreational, and small-scale commercial fishing. These fishermen typically operate small vessels (less than 25 ft (7.6 m)), and tend to fish more in the summer months when weather and sea conditions are calmer. Most of these small vessels target shallow-water bottomfish, but some also target deep-water species. The catch from these small vessels is destined for local markets and consumers in the CNMI, and is usually not exported.

In addition to small vessels, several larger vessels (over 40 ft (12.2 m) in

length) also target deep-water bottomfish at offshore seamounts and banks. In 2006, for example, there were six large vessels targeting bottomfish around the CNMI. Landings from these large vessels are offloaded on Saipan and in other CNMI commercial ports, and are often exported by air to Japan. Thus, the catch from these large vessels does not enter local markets as a food supply for CNMI residents. If these vessels were to target bottomfish in nearshore waters around CNMI, the resulting fishing pressure could be excessive on bottomfish stocks at nearshore banks, potentially threatening both the fish stocks and the fisheries that have historically been dependent on these resources.

The CNMI is relatively close to Guam, and it is possible for large bottomfish vessels based in Guam to travel to fishing grounds in the CNMI. NMFS recently implemented a final rule that prohibits large vessels (i.e., greater than 50 ft (15.2 m)) from bottomfish fishing within 50 nm (80.5 km) around Guam (71 FR 64474; November 2, 2006). Without similar closed areas around the CNMI, operators of these large Guam-based vessels may choose to fish for bottomfish within U.S. EEZ waters around the CNMI. This could result in excessive fishing pressure on bottomfish stocks at nearshore banks, potentially threatening both the fish stocks and the fisheries that have historically been dependent on these resources.

In addition to the possibility of Guam-based vessels entering the CNMI bottomfish fishery, the Council is concerned about several other issues regarding bottomfish fishing in the CNMI. First, existing data collection programs in the CNMI are insufficient to monitor catches and determine the impacts of the fishery on the bottomfish stocks being harvested, or to determine the species composition and amount of discarded catch. Second, large bottomfish vessels need to harvest relatively large catches to cover operational costs, and these large catches could deplete nearshore stocks. Stock depletion would threaten the sustainability of the CNMI bottomfish fishery, and if catch rates were significantly reduced, small vessels would not be able to continue operating. Finally, because the catches from large vessels are typically exported, traditional patterns of supply and consumption of bottomfish in the local community would be disrupted.

In response to these concerns, the Council developed Amendment 10 with the following objectives: (1) ensure that adequate information is routinely collected for the CNMI offshore

bottomfish fishery; (2) provide for sustained community participation; and (3) encourage the consistent availability of locally-caught deepwater bottomfish to CNMI markets and consumers.

The issues considered here were first raised in 2001 by CNMI members of the Council's Advisory Panel. The Council and its advisory groups discussed these issues during 2001 and 2002, and the Council first took action on the measures contained in this document on February 13, 2003, at its 117th Council meeting held in Saipan, CNMI. A range of alternatives and preliminary analyses of their anticipated impacts were presented for consideration and the Council identified several management recommendations. Following further public comments, at its 118th meeting (June 2003, in Honolulu, Hawaii) the Council again considered this matter and recommended that additional input on the issue and alternatives be solicited from the CNMI government.

Correspondence with the CNMI governor, and public input during a series of scoping sessions in the CNMI, led to the development and analysis of a revised set of management recommendations, adopted at the Council's 126th meeting held March 14–17, 2005, in Honolulu, Hawaii. The Council then prepared Amendment 10

(including an environmental assessment) that contains background information on the issue, associated analyses, and proposed regulatory changes for consideration by NMFS. This proposed rule would implement the management measures recommended in Amendment 10.

This proposed rule would require the owners of all vessels commercially fishing for bottomfish management unit species (BMUS) in EEZ waters around the CNMI to obtain Federal fishing permits. Permit eligibility would not be restricted, and permits would be renewable on an annual basis. NMFS has initially determined that a permit fee of \$80 is appropriate, but will consider whether a lesser cost is sufficient to cover the administrative costs of the permit. The amount of the permit fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service incurred in processing the permit. The fee may not exceed such costs and is specified with each permit application form.

This proposed rule would require the operators of all commercial bottomfish vessels to complete and submit Federal catch reports. These daily reports are logbooks that contain the fisherman's record of bottomfish fishing effort,

catch, discards, interactions with protected species, and related information. In addition to the fishing logbook, vessels over 40 ft (12.2 m) fishing for bottomfish in the CNMI would be required to complete and submit Federal sales reports for the bottomfish that they sell.

This proposed rule would close certain EEZ waters around the CNMI to bottomfish fishing by vessels over 40 ft (12.2 m). The closed areas would include EEZ waters from the shoreline to 50 nm (80.5 km) around the southern islands of the CNMI, from the Guam-CNMI EEZ boundary to a line halfway between Farallon de Medinilla and Anatahan Islands, and EEZ waters from the shoreline to 10 nm (18.5 km) around the northern island of Alamagan (Fig. 1). The closed area boundaries would be defined by straight lines for clarity and to facilitate enforcement. Transshipping of bottomfish would continue to be allowed within the closed areas. Any vessel commercially receiving bottomfish fish or fish products from a fishing vessel would be required to be registered with a valid CNMI commercial bottomfish permit, and the operator would be required to report any bottomfish transshipping activity in the Federal fishing logbook forms.

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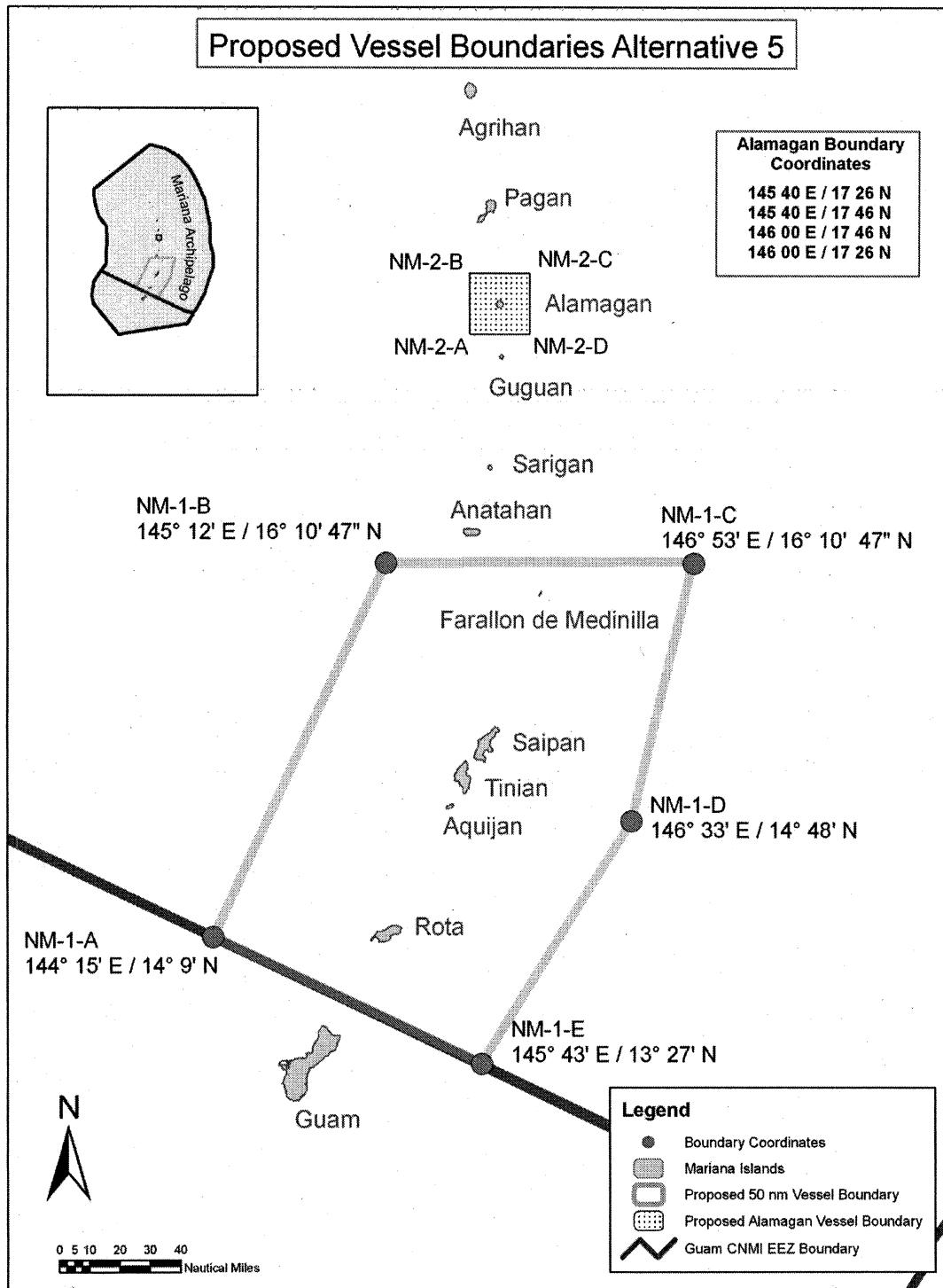


Figure 1. Proposed CNMI medium and large vessel prohibited areas.

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Shipboard vessel monitoring system (VMS) units would be required on vessels over 40 ft (12.2 m). The VMS is an automated, satellite-based system that assists NOAA's Office for Law Enforcement and the U.S. Coast Guard

in monitoring compliance with closed areas in a reliable and cost-effective manner. Electronic VMS shipboard equipment installed permanently on board a vessel provides information about the vessel's position and activity. That information is communicated

between the shipboard VMS unit and the monitoring agency's fishery monitoring center, where the identity and location of the vessels are shown on a map display, comparing vessel positions with features of interest, such as closed area boundaries. The Pacific

Islands VMS was developed in cooperation with fishermen, fishery managers, the U.S. Coast Guard, and other government agencies, and is currently used in the Hawaii- and American Samoa-based longline fisheries, and in the bottomfish fishery operating in the Papahanaumokuakea Marine National Monument in the Northwestern Hawaiian Islands (NWHI).

CNMI-registered bottomfish vessels are required to be marked with their official number in block lettering of a minimum of three inches (7.6 cm) high. The implementation of the new CNMI commercial bottomfish permit would tie to a related Federal vessel identification requirement in § 665.16 that requires Federal permit holders to mark their vessels in a specific way using much larger lettering. These Federal vessel identification requirements were created for large commercial fishing vessels to assist in aerial and at-sea enforcement of fishing regulations. The typical CNMI-based commercial bottomfish vessel, however, is not large enough to have the superstructure or deckhouse to support the Federal vessel identification markings. The proposed rule would exempt CNMI-based commercial bottomfish vessels from the Federal vessel identification requirements, if the vessels are less than 40 ft (12.2 m) long and in compliance with CNMI vessel registration and marking requirements. Commercial CNMI bottomfish vessels over 40 ft (12.2 m) would be required to be marked in compliance with Federal vessel identification requirements.

To date, the regional requirements for VMS in 50 CFR part 665 have applied only to pelagic longline fishing, so the requirements are located in the pelagic fisheries section of the regulations. (The VMS requirements for the NWHI bottomfish fishery are found in 50 CFR 404.5 and are not affected by this proposed rule.) Because the proposed rule would add VMS requirements for bottomfish fishing, the section regarding the vessel monitoring system (§ 665.25) would be moved from the pelagic fishery requirements to the general requirements and renumbered as § 665.19. Accordingly, the VMS-related prohibitions found in § 665.22 would also be moved to the general prohibitions in § 665.15. The VMS-related requirements would also be clarified to require that VMS units be installed and operational when vessels are at sea.

In the definition of bottomfish management unit species, the scientific name for armorhead is revised to the valid taxonomic name, and the scientific name of the pink snapper is revised to include the species, which

was inadvertently omitted from the definition. The spellings of local names of the longtail and pink snappers are also corrected. In the definition of receiving vessel permit, the cross-reference to receiving vessel permits for pelagic longlining is corrected to the proper paragraph.

Comments on this proposed rule must be received by October 23, 2008. To be considered, comments must be received by close of business on October 23, 2008, not postmarked or otherwise transmitted by that date.

In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on proposed FMP Amendment 10 through October 20, 2008, as stated in the Notice of Availability published on August 20, 2008 (73 FR 49157). Public comments on this proposed rule, if received by October 20, 2008, will also be considered in the approval/disapproval decision for Amendment 10. Comments received after that date may not be considered in the approval/disapproval decision for Amendment 10, but will be considered for this proposed rule.

#### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Bottomfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

The Council prepared an Environmental Assessment for Amendment 10 that evaluates the potential impacts of the proposed action and alternatives. A copy of the environmental assessment is available from the Council (see **ADDRESSES**).

The purpose and need for the proposed action is to monitor the CNMI bottomfish fishery, to sustain community participation in the bottomfish fishery (i.e., small-scale fishing, community exchange, and sale), and to encourage consistent availability of locally-caught bottomfish in the CNMI.

Five alternatives were considered: Alternative 1 - No action, Alternative 2 - Establish a 3–50 nm (5.6–80.5 km) closure for large vessels (over 40 ft (12.2 m)) and other permitting and reporting measures, Alternative 3 - Establish a 250 lb (113 kg) limit for onaga (longtail snapper, *Etelis coruscans*) per trip (all fishermen on the trip combined) outside 3 nm (5.6 km) from the CNMI, Alternative 4 - Limit entry to recent documented fishery participants outside 3 nm (5.6 km) from the CNMI, and 5 -

Establish a 50 nm (80.5 km) closure for vessels over 40 ft (12.2 m) and other permitting and reporting measures. Alternative 5 was selected as the preferred alternative. The action would establish a 50 nm (80.5 km) closed area for commercial bottomfish vessels over 40 ft (12.2 m) around the southern islands in the CNMI, and would also establish a 10 nm (18.5 km) closure around the northern island of Alamagan. Vessels over 40 ft (12.2 m) would be required to have VMS units installed, and the operators would be required to submit Federal sales reports for the bottomfish they sell. Alternative 5 would also require Federal fishing permits and data reporting for all commercial bottomfish vessels.

The Council expects that the proposed rule would maintain or improve current levels of bottomfish recruitment and control the risk of localized depletion from nearshore fishing by medium and large vessels. The proposed rule would maintain the opportunity for viable catch rates at banks within the limited fishing range of smaller vessels in the CNMI, which would promote social and economic stability within the community-based fishery and help preserve elements of the local fishing culture. The rule may discourage (but would not prohibit) expansion of the medium and large vessel sectors.

Most CNMI commercial bottomfish vessels are smaller than 40 ft (12.2 m) and generally around 25 ft (7.6 m). There are currently no active large vessels in the fishery. Six vessels larger than 40 ft (12.2 m) were active in 2006, and one in 2007. The closed areas around Saipan and Alamagan would serve to discourage (but would not prohibit) the renewal of a large-vessel export-oriented bottomfish fishery. These large vessels would still be able to fish in waters beyond 50 nm (80.5 km) around the southern CNMI islands, outside of 10 nm (18.5 km) around Alamagan, and in all other waters of the northern CNMI. The permitting and data collection measures would improve information that is available to fishery scientists and managers, and would be used to improve stock assessments and support management measures that achieve optimum yields and maintain a sustainable fishery. The proposed rule would help to ensure the availability of locally-caught bottomfish for CNMI's consumers, enable larger vessels to continue to harvest bottomfish, and continue some opportunities for overseas bottomfish sales.

By reducing the potential for fishing pressure from medium and large vessels, the proposed rule is expected to

reduce the risk of nearshore bottomfish depletion and ensure healthy bottomfish stocks. Catches of non-target fish are low because of the selective nature of the fishing gear used, and these non-target catches are expected to remain low as a result of the reduced fishing effort.

The proposed rule is not expected to have a significant adverse impact on coastal, demersal, or other marine habitats including essential fish habitat or habitat areas of particular concern. The proposed measures are intended to reduce fishing pressure on nearshore bottomfish areas, and would result in a few larger vessels being required to move further offshore. There is a slight potential for increased impacts of bottomfish fishing on the essential fish habitat of offshore banks, but because of the gear types used in the fishery, and the proposed requirements for permits and reporting, the impacts are not expected to be significant.

No significant adverse impacts are expected on protected marine mammals, sea turtles, or seabirds. In general, the CNMI bottomfish and pelagic fisheries are small-scale hook-and-line fisheries with few to no interactions with marine mammals, sea turtles, or seabirds. The proposed rule would reduce fishing pressure within 50 nm (80.5 km) of the CNMI southern islands and 10 nm (18.5 km) of Alamagan Island, and is not expected to result in significant changes in fishing interactions with protected species in other areas.

Positive impacts on the catch rates for small vessels are expected because medium and large commercial bottomfish fishing vessels would be prohibited from fishing near the southern islands and Alamagan. Negative impacts may be expected for medium and large commercial vessels due to increased operating costs associated with fishing beyond the closed area boundaries. This negative impact may be offset by higher bottomfish catch rates in the offshore areas that have been fished to a lesser degree. Given that no large commercial bottomfish vessels are thought to be operating around the southern islands or Alamagan at this time, no immediate impacts are expected and future fishing operations would be able to anticipate the expenses.

There would be additional administrative burdens and costs to NMFS for implementing the proposed rule. These costs would vary depending on the size of the CNMI commercial bottomfish fishery. The Federal permit program is expected to cost \$20–35K annually. The cost to establish the data reporting program is estimated to be

about \$70K, and the annual operating costs, including shoreside monitoring, is estimated at about \$100K. The costs to NMFS and the USCG to enforce the permitting, data reporting, and closed area requirements (including the VMS program) are expected to be \$372–403K for the first year, and \$260–290K annually after that.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

#### Description of Small Entities to Which the Rule Would Apply

The preferred alternative would apply to all vessels commercially fishing for bottomfish in U.S. EEZ waters around CNMI. Given an annual average of 58 known commercial fish harvesting vessels between 2001–05, with an annual average fleet-wide adjusted revenue of \$136,827, it is estimated that each vessel operator realized an average of \$2,359 in annual ex-vessel gross revenues from their bottomfish fishing operations. Because each vessel has gross receipts under \$4.0 million, is independently owned and operated, and is not dominant in its field, all vessels comprising this fishery are deemed to be small entities under the Small Business Administration's definition of a small fish harvester. In 2005, 62 vessels less than 40 ft (12.2 m) participated in the CNMI bottomfish fishery. As many as eleven medium and large vessels (i.e., greater than 40 feet or 12.2 m) are believed to have participated in this fishery since 1997. Information from fisheries officials in the CNMI indicate that there were six active medium and large vessels in 2006, and one in 2007.

#### Description of Alternatives

**Alternative 1: No Action.** In the short-term, fishery participants would be expected to continue their normal operations. In the longer-term, economic impacts (including market and non-market impacts) on small-vessel commercial, recreational, and charter fishery participants could be negative if localized depletion of bottomfish occurs within their limited fishing range. Due to their larger vessel sizes, larger-scale commercial bottomfish operations (which are still considered small entities) would still have access to offshore fishing areas. Smaller vessels would not, however, and could see bigger losses. Operators of the smaller vessels already generally participate in more than one fishery over the course of a year, and would likely shift their bottomfish fishing effort to other boat-based fisheries (e.g.,

pelagic trolling). Whether or not they would be able to recoup their lost bottomfish income is unclear, but a disruption of the nearshore bottomfish fishery would represent a reduction in their portfolio of fishing opportunities.

**Alternative 2: Prohibit commercial fishing for bottomfish management unit species (BMUS) by vessels greater than 50 ft (15.2 m) within U.S. EEZ waters 3–50 nm (5.6–80.5 km) around the CNMI; require that operators of vessels greater than 50 ft (15.2 m) that land BMUS in the CNMI have Federal fishing permits and submit Federal logbooks of their associated catch and effort.** Alternative 2 may have more positive impacts than Alternative 1 for small-vessel commercial, recreational, and charter fishery participants by maintaining the opportunity for viable catch rates at banks within their limited fishing range around the CNMI. Unlike Alternative 1, Alternative 2 could cause negative impacts on the large-vessel commercial sector of the fishery (whose participants are still considered small entities) through the realization of increased operating costs necessitated by the requirement that large vessels fish on banks greater than 50 nm (80.5 km) from the CNMI, although this impact might be offset initially by higher bottomfish catch rates at more distant seamounts that remain open to large vessels. Likely areas for bottomfish fishing more than 50 nm (80.5 km) from shore are a chain of seamounts, some rising to shallow depths, about 200 nm (370 km) west of the Mariana Islands. As these areas have not been previously fished by the CNMI fleet, there would be a high cost associated with exploring the bottomfish fishing potential of these seamounts and their catch rates are unknown.

As compared to the No Action Alternative, Alternative 2 would eliminate commercial bottomfish fishing by large vessels (still considered small entities for purposes of this analysis) in waters 3–50 nm (5.6–80.5 km) around the CNMI. There may be immediate impacts to vessel operations under this alternative as there may be some large commercial bottomfish fishing vessels active in waters within 50 nm (80.5 km) of the Northern Islands, though none is believed to be active in waters around the Southern Islands. This alternative would eliminate the potential renewal or expansion of the large vessel fishery sector in waters around Saipan. Thus, Alternative 2 would have greater potential than Alternative 1 for reducing the risk of local depletion of areas around Saipan that are fished by small-scale fishermen. A chain of seamounts lies parallel to the Mariana Archipelago nearly 200 nm (370 km) to the west. Some of these seamounts rise to shallow depths, but the seamounts are poorlycharted and the associated bottomfish habitat is not known. Whether or not large vessels would invest time and money in exploring these seamounts for bottomfish grounds under this alternative is unknown. In the long-term, this alternative would foreclose the opportunity for commercial bottomfish fishing using large vessels in the closed areas.

This alternative would require the operators of CNMI-based vessels larger than 50 ft (15.2 m) commercially fishing for bottomfish in U.S. EEZ waters around the CNMI to obtain Federal fishing permits and to submit Federal catch reports. Permit eligibility would not be restricted, and the permit would be renewable on an annual basis. It is anticipated that initial permit applications would require 0.5 hr per applicant, with renewals requiring an additional 0.5 hr annually. No special skills beyond the ability to read and write in English would be required to complete the permit application, logbooks or sales reports. The fee for the proposed Federal fishing permit is proposed to be \$80, and would be calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service incurred in processing the permit. In developing the final rule, NMFS may consider whether a lesser permit fee is appropriate. A \$20 permit fee would represent approximately 0.8 percent of revenues earned by individual vessels in the 2001–05 fishery. Similarly, a \$40 permit fee would represent about 1.7 percent, a \$60 fee would be about 2.6 percent, and an \$80 fee would represent about 3.4 percent of revenues earned by individual vessels in the 2001–05 fishery.

*Alternative 3: Limit onaga landings to no more than 250 lb (113 kg) per trip for any vessel fishing in U.S. EEZ waters beyond 3 nm (5.6 km) around the CNMI.* Alternative 3 would be expected to yield beneficial economic impacts for small vessels that target onaga (longtail snapper). They would be expected to maintain their opportunities for viable onaga catch rates at banks within their limited fishing range, as the reduced fishing revenues expected with a per-trip limit of 250 lb (113 kg) of onaga would discourage competition from large-scale, commercial onaga-fishing operations. Economic impacts on these large-scale operations (still considered small entities) would be adverse, as a 250-lb (113-kg) trip limit would not yield enough revenues to cover trip costs, and these trips would be expected to become economically inefficient. This would be expected to discourage medium/large vessels from entering the fishery.

*Alternative 4: Establish a limited access program with Federal permit and reporting requirements, for vessels targeting BMUS more than 3 nm (5.6 km) around the CNMI.* Alternative 4 would likely have a positive economic impact on catch rates and ex-vessel revenues for fishery participants who have a documented history of bottomfish fishing in the U.S. EEZ, but a negative impact for undocumented or future potential participants. Limiting total fishery participation would be expected to result in increased catch rates for qualifying participants, fishing efficiency, and profits for those who qualify and continue fishing. Economic impacts on existing and future non-qualifiers would be highly adverse, with no bottomfish catches or revenues available for this group. If limited-access permits were transferable, this alternative would also

create an economic value for these permits, as the original qualifiers could subsequently sell or lease them to a new round of participants. This would represent a windfall profit to the original qualifiers.

This alternative would require the operators of all CNMI-based vessels commercially fishing for bottomfish in U.S. EEZ waters around the CNMI to obtain Federal fishing permits and to submit Federal catch reports. Permit eligibility would not be restricted in any way, and permits would be renewable on an annual basis. It is anticipated that initial permit applications would require 0.5 hr per applicant, with renewals requiring an additional 0.5 hr annually. The fee for the proposed Federal fishing permit is proposed to be \$80, and would be calculated in accordance with the procedures of the NOAA Finance Handbook. A \$20 permit fee would represent approximately 0.8 percent of revenues earned by individual vessels in the 2001–05 fishery. Similarly, a \$40 permit fee would represent about 1.7 percent, a \$60 fee would be about 2.6 percent, and an \$80 fee would represent about 3.4 percent of revenues earned by individual vessels in the 2001–05 fishery. Based on experience in other fisheries, it is expected that the time requirement for filling out Federal catch reports would be approximately 20 min per vessel per fishing day. No special skills beyond the ability to read and write in English would be required to complete the permit application, logbooks or sales reports.

*Alternative 5 (Preferred): Prohibit commercial fishing for BMUS by medium and large vessels within U.S. EEZ waters 0–50 nm (0–80.5 km) around CNMI in the area from the southern boundary of the EEZ (south of Rota) to the north latitude of 16° 47' (halfway between Farallon de Medinilla to Anatahan) and within EEZ waters 0–10 nm (0–18.5 km) around Alamagan Island; require that medium and large vessels fishing commercially for BMUS in EEZ waters around the CNMI carry operating VMS units, and complete Federal sales reports for any BMUS sold in the CNMI; require that operators of all vessels fishing commercially for BMUS in EEZ waters around the CNMI have Federal fishing permits and submit Federal logbooks of their associated catch and effort.* The impacts of Alternative 5 on commercial bottomfish vessels over 40 ft (12.2 m) would be similar to those of Alternative 2. However, the impacts to the catch rates and ex-vessel revenues of small-vessel fishermen would be more pronounced, as medium and large commercial bottomfish fishing vessels (though still considered small entities) would be prohibited from fishing around the southern islands and Alamagan. The recent general absence of such vessels from the fishery suggests that the area is not profitable for these vessels, and fishing in the restricted area may be more opportunistic than planned. Therefore, restricting medium and large vessels in the area may yield only a minimal adverse economic impact to individual vessels, mitigated by profitable opportunities elsewhere.

This alternative would require the operators of all CNMI-based vessels commercially fishing for bottomfish in U.S.

EEZ waters around the CNMI to obtain Federal fishing permits and to submit Federal catch reports. Permit eligibility would not be restricted in any way, and the permit would be renewable on an annual basis. It is anticipated that initial permit applications would require 0.5 hr per applicant, with renewals requiring an additional 0.5 hr annually. The fee for the proposed Federal fishing permit is proposed to be \$80, and would be calculated in accordance with the procedures of the NOAA Finance Handbook. A \$20 permit fee would represent approximately 0.8 percent of revenues earned by individual vessels in the 2001–05 fishery. Similarly, a \$40 permit fee would represent about 1.7 percent, a \$60 fee would be about 2.6 percent, and an \$80 fee would represent about 3.4 percent of revenues earned by individual vessels in the 2001–05 fishery. Based on experience in other fisheries, it is expected that the time requirement for filling out Federal catch reports would be approximately 20 min per vessel per fishing day. No special skills beyond the ability to read and write in English would be required to complete the permit application, logbooks and sales reports.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), including permits, catch and sales reports, vessel identification, and VMS. These requirements have been submitted to OMB for approval. Permit eligibility would not be restricted in any way, and the permit would be renewable on an annual basis. The Council anticipates that initial permit applications would require 0.5 hours per applicant, with renewals requiring an additional 0.5 hours annually. It is estimated that NMFS may receive and process up to 50 to 125 permit applications each year. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at 25 to 62 hours per year. NMFS has initially determined that a permit fee of \$80 is appropriate, but will consider whether a lesser cost is sufficient to cover the administrative costs of the permit.

The proposed rule would also require the operators of all vessels commercially fishing for bottomfish in U.S. EEZ waters around the CNMI to complete and submit Federal catch reports. The Council anticipates the time requirement to complete Federal catch reports to be approximately 20 minutes per vessel per fishing day. Assuming that the 50 to 125 vessels make 10 to 50 trips per year, and average 1.2 days per trip, the program would generate in the range of 600 to 7,500 daily fishing logbooks per year. Thus, the total collection-of-information burden estimate for fishing data reporting is estimated at 200 to 2,500 hours per year.

The proposed rule would also require the operators of medium and large commercial bottomfish vessels to complete and submit Federal sales reports. The Council anticipates the time requirement for completing Federal sales reports to be approximately 35 minutes per vessel per fishing trip. Assuming six medium and large vessels make 15 trips per year, the program would generate approximately 90 sales reports per year. Thus, the total collection-of-information burden estimate for sales data reporting by fishermen is estimated at 52 hours per year. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information.

For the medium and large vessel identification requirements, the burden is estimated at 45 minutes to paint each vessel (15 minutes for each of three locations on the vessel where marking is required), and about \$10 for paint and supplies. Assuming six medium and large bottomfish vessels are active, the total collection-of-information burden estimate is 4.5 hours and \$60.

For the medium and large vessel VMS requirements, the estimated time per response is four hours to install a VMS unit, and two hours per year to repair and maintain a VMS unit. Assuming six medium and large bottomfish vessels

are active, the total collection-of-information burden estimate for compliance with VMS requirements is 24 hours the first year and 12 hours annually after that.

Public comment is sought regarding: whether this proposed collections of information are 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 collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see **ADDRESSES**), and by email to *David\_Rostker@omb.eop.gov* or by fax to 202-395-7285.

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 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian

Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 29, 2008.

**James W. Balsiger,**  
*Acting Assistant Administrator For Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be 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 § 665.12, add the definitions of “CNMI commercial bottomfish permit”, “Medium vessel”, and “Receiving vessel” in alphabetical order, and in the definition of “Bottomfish management unit species” revise the Hawaiian local name of longtail snapper and the Samoan local name and scientific name of pink snapper, in the definition of “Seamount groundfish” revise the scientific name of armorhead, and revise the definitions of “Receiving vessel permit” and “Vessel monitoring system unit” to read as follows:

#### § 665.12 Definitions.

\* \* \* \* \*

*Bottomfish management unit species* means the following fish:

Common name	Local name	Scientific name
Longtail snapper	Onaga, ula'ula (H); palu-loa (S) * * * * *	<i>Etelis coruscans</i> .
Pink snapper	Opakapaka (H); palu-ena 'ena (S); gadao (G) * * * * *	<i>Pristipomoides filamentosus</i> .

\* \* \* \* \*

*CNMI commercial bottomfish permit* means the permit required by § 665.61 (a)(5) to engage in commercial fishing for bottomfish management unit species in U.S. EEZ waters around the CNMI.

\* \* \* \* \*

*Medium vessel*, as used in §§ 665.61 through 665.72, means any vessel equal to or more than 40 ft (12.2 m) and less than 50 ft (15.2 m) in length overall.

\* \* \* \* \*

*Receiving vessel* means a vessel that receives fish or fish products from a fishing vessel, and with regard to a vessel holding a permit under § 665.21(e) that also lands Pacific Pelagic Management Unit Species taken by other vessels using longline gear.

*Receiving vessel permit* means a permit required by § 665.21(e) for a receiving vessel to tranship or land

Pacific pelagic management unit species taken by other vessels using longline gear.

\* \* \* \* \*

*Seamount groundfish* means the following species:

Common name	Scientific name
Armorhead	<i>Pseudopentaceros richardsoni</i>

\* \* \* \* \*

*Vessel monitoring system unit (VMS unit)* means the hardware and software owned by NMFS, installed on vessels by NMFS, and required to track and transmit the positions of certain vessels.

\* \* \* \* \*

3. In § 665.13, revise paragraphs (f)(2)(i) through (f)(2)(v), and add a new paragraph (f)(2)(vi) to read as follows:

#### § 665.13 Permits and fees.

\* \* \* \* \*

(f) *Fees.* \* \* \*

(2) \* \* \*

(i) Hawaii longline limited access permit.

(ii) Mau Zone limited access permit.

(iii) Coral reef ecosystem special permit

(iv) American Samoa longline limited access permit.

(v) Main Hawaiian Islands non-commercial bottomfish permit.

(vi) CNMI commercial bottomfish permit.

\* \* \* \* \*

4. In § 665.14, revise paragraphs (a)(1), (a)(2)(i), and (c) to read as follows:

#### **§ 665.14 Reporting and recordkeeping.**

##### (a) *Fishing record forms*—(1)

*Applicability.* The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 665.61(a)(2), 665.61(a)(3), 665.61(a)(4), 665.61(a)(5), 665.81, or 665.602 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator. All information specified by the Regional Administrator must be recorded on paper or electronically within 24 hours after the completion of each fishing day. The logbook information, reported on paper or electronically, for each day of the fishing trip must be signed and dated or otherwise authenticated by the vessel operator in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this paragraph (a).

(2) *Timeliness of submission.* (i) If fishing was authorized under a permit pursuant to §§ 665.21, 665.41, 665.61(a)(3), 665.61(a)(5), or 665.81, the vessel operator must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (a)(2)(iii) of this section.

\* \* \* \* \*

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of § 665.41, or the owner of a medium or large fishing vessel subject to the requirements of § 665.61(a)(5), must submit to the Regional Administrator, within 72 hours of offloading crustacean or bottomfish management unit species, respectively, an accurate and complete sales report on a form provided by the Regional Administrator. The form must be signed and dated by the fishing vessel operator.

#### **§ 665.22 [Amended]**

5. Redesignate paragraphs (o) through (u) in § 665.22 as paragraphs (m) through (s) in § 665.15, and revise newly-redesignated paragraphs (m) through (s) in § 665.15 to read as follows:

#### **§ 665.15 Prohibitions.**

\* \* \* \* \*

(m) Fish for, catch, or harvest management unit species with longline

gear without an operational VMS unit on board the vessel after installation of the VMS unit by NMFS, in violation of § 665.19(e)(2).

(n) Possess management unit species, that were harvested after NMFS has installed the VMS unit on the vessel, on board that vessel without an operation VMS unit, in violation of § 665.19(e)(2).

(o) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or attempt any of the same; or move or remove a VMS unit without the prior permission of the SAC in violation of § 665.19(e)(3).

(p) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit, in violation of § 665.19(e)(1).

(q) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit, in violation of § 665.19(e)(1).

(r) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer, in violation of § 665.28(f)(4).

(s) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC, in violation of § 665.19(f).

6. In § 665.16, add new paragraph (e)(2) to read as follows:

#### **§ 665.16 Vessel identification.**

\* \* \* \* \*

(e) \* \* \*

(2) A vessel less than 40 ft (12.2 m) in length registered for use under a CNMI commercial bottomfish permit that is in compliance with CNMI bottomfish vessel registration and marking requirements.

#### **§ 665.25 [Redesignated as § 665.19]**

7. Redesignate § 665.25 as new § 665.19, and revise newly-redesignated § 665.19 to read as follows:

#### **§ 665.19 Vessel monitoring system.**

(a) *Applicability.* The holder of any of the following permits is subject to the vessel monitoring system requirements in this part:

(1) Hawaii longline limited access permit issued pursuant to § 665.21(b);

(2) American Samoa longline limited entry permit, for vessel size Class C or D, issued pursuant to § 665.21(c);

(3) Vessels permitted to fish in Crustaceans Permit Area 1 VMS Subarea; or

(4) CNMI commercial bottomfish permit, if the vessel is a medium or large bottomfish vessel, issued pursuant to § 665.61(a)(5).

(b) *VMS unit.* Only a VMS unit owned by NMFS and installed by NMFS

complies with the requirement of this subpart.

(c) *Notification.* After a permit holder subject to this part has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry and operate the VMS unit after the date scheduled for installation.

(d) *Fees and charges.* During the experimental VMS program, the holder of a permit subject to this part shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(e) *Permit holder duties.* The holder of a permit subject to this part, and master of the vessel, must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry and continuously operate the VMS unit on board whenever the vessel is at sea.

(3) Not remove, relocate, or make non-operational the VMS unit without prior approval from the SAC.

(f) *Authorization by the SAC.* The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

8. In § 665.61, add new paragraph (a)(5) to read as follows:

#### **§ 665.61 Permits.**

(a) \* \* \*

(5) *Commonwealth of the Northern Mariana Islands (CNMI) commercial.* The owner of any vessel used to commercially fish for, tranship, receive, or land bottomfish management unit species shoreward of the outer boundary of the CNMI management subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

\* \* \* \* \*

9. In § 665.62, add paragraphs (o) through (r) to read as follows:

#### **§ 665.62 Prohibitions.**

\* \* \* \* \*

(o) Use a vessel to fish commercially for bottomfish management unit species shoreward of the outer boundary of the CNMI subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.61(a)(5).

(p) Use a medium or large vessel to fish for bottomfish management unit species within the CNMI medium and large vessel bottomfish prohibited areas, as defined in § 665.70(b).

(q) Retain, land, possess, sell, or offer for sale, shoreward of the outer boundary of the CNMI subarea, bottomfish management unit species that were harvested in violation of § 665.62(p), except that bottomfish management unit species that are harvested legally may be transferred to a receiving vessel shoreward of the outer boundary of the CNMI medium and large vessel bottomfish prohibited area as defined in § 665.70(b).

(r) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(a) when using a vessel to engage in commercial fishing for bottomfish management unit species shoreward of the outer boundary of the CNMI subarea in violation of § 665.14(a).

10. In § 665.69, remove paragraph (a)(7) and redesignate paragraph (a)(8) as paragraph (a)(7), and revise paragraph (a) introductory text, paragraphs (a)(6), and (c) to read as follows:

#### **§ 665.69 Management subareas.**

(a) The bottomfish fishery management area is divided into subareas with the following designations and boundaries:

(6) *CNMI Management Subarea* means the EEZ seaward of the CNMI. The CNMI Management Subarea is further divided into subareas with the following designations and boundaries:

(i) *CNMI Inshore Area* means that portion of the EEZ within 3 nautical miles of the shoreline of the CNMI.

(ii) *CNMI Offshore Area* means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

\* \* \* \* \*

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries, except that the outer boundary of the CNMI Inshore Area is 3 nautical miles from the shoreline. The boundary between the fishery management areas of Guam and the CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI.

11. Revise § 665.70 to read as follows:

#### **§ 665.70 Bottomfish fishery area management.**

(a) *Guam large vessel bottomfish prohibited area (Area GU-1)*. A large vessel of the United States may not be used to fish for bottomfish management unit species in the Guam large vessel bottomfish prohibited area, defined as the U.S. EEZ waters surrounding Guam that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
GU-1-A	14°16'	144°17'
GU-1-B	13°50'	143°52'
GU-1-C	13°17'	143°46'
GU-1-D	12°50'	143°54'
GU-1-E	12°30'	144°14'
GU-1-F	12°25'	144°51'
GU-1-G	12°57'	145°33'
GU-1-H	13°12'	145°43'
GU-1-I	13°29'44"	145°48'27"
GU-1-A	14°16'	144°17'

(b) *CNMI medium and large vessel bottomfish prohibited areas*. A medium or large vessel of the United States may not be used to fish commercially for bottomfish management unit species in the following areas:

(1) *CNMI Southern Islands (Area NM-1)*. The CNMI Southern Islands prohibited area is defined as the waters of the U.S. EEZ surrounding the CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM-1-A	14°9'	144°15'
NM-1-B	16°10'47"	145°12'
NM-1-C	16°10'47"	146°53'
NM-1-D	14°48'	146°33'
NM-1-E	13°27'	145°43'
NM-1-A	14°9'	144°15'

(2) *CNMI Alamagan Island (Area NM-2)*. The CNMI Alamagan Island prohibited area is defined as the waters of the U.S. EEZ surrounding the CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM-2-A	17°26'	145°40'
NM-2-B	17°46'	145°40'
NM-2-C	17°46'	146°00'
NM-2-D	17°26'	146°00'
NM-2-A	17°26'	145°40'

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