

management purposes under the HMS FMP.

**Classification**

NMFS has determined that the proposed rule is consistent with the HMS FMP and preliminarily determined that this proposed rule is consistent with the MSA and other applicable laws.

An Initial Regulatory Impact Review was conducted to analyze the potential economic impacts and costs of each proposed alternative under consideration, including the preferred alternative addressed in this proposed rule.

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

Under the Regulatory Flexibility Act, 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. The proposed action is not expected to have any direct or indirect socioeconomic impacts, because harvest limits and management measures influencing ex-vessel revenue and personal income are not established under the range of alternatives considered. Instead, the proposed action amends the HMS FMP to modify the suite of MUS and to revise the framework and process used by the Council and NMFS to prevent overfishing on MUS. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 25, 2011.

**John Oliver,**

*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 as follows:

**PART 660—FISHERIES OFF THE WEST COAST STATES**

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

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

2. In § 660.702, revise the definition of “Highly Migratory Species (HMS)” to read as follows:

**§ 660.702 Definitions.**

\* \* \* \* \*

*Highly Migratory Species (HMS)* means species managed by the FMP, specifically:

Billfish/Swordfish:  
striped marlin (*Tetrapturus audax*)  
swordfish (*Xiphias gladius*)

Sharks:  
common thresher shark (*Alopias vulpinus*)  
shortfin mako or bonito shark (*Isurus oxyrinchus*)  
blue shark (*Prionace glauca*)

Tunas:  
north Pacific albacore (*Thunnus alalunga*)  
yellowfin tuna (*Thunnus albacares*)  
bigeye tuna (*Thunnus obesus*)  
skipjack tuna (*Katsuwonus pelamis*)  
northern bluefin tuna (*Thunnus orientalis*)

Other:  
dorado or dolphinfish (*Coryphaena hippurus*)

\* \* \* \* \*

3. In § 660.709, revise paragraph (a) to read as follows:

**§ 660.709 Annual specifications.**

(a) *Procedure.* (1) In June of each year, the HMSMT will deliver a preliminary SAFE report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS, including updated MSY and OY estimates based on the best available science. The Council’s HMS Science and Statistical Committee will review the estimates and makes a recommendation on their suitability for management. The Council will review these recommendations and decide whether to adopt updated numerical estimates of MSY and OY, which are then submitted as recommendations for NMFS to review as part of the management measures review process.

(2) In September of each year, the HMSMT will deliver a final SAFE report to the Council. The Council will adopt any necessary harvest guidelines, quotas or other management measures including updated MSY and OY estimates if any for public review.

(3) In November each year, the Council will take final action on any necessary harvest guidelines, quotas, or other management measures including updated MSY and OY estimates if any and make its recommendations to NMFS.

(4) Based on recommendations of the Council, the Regional Administrator will approve or disapprove any harvest guideline, quota, or other management measure including updated MSY and OY estimates after reviewing such recommendations to determine

compliance with the FMP, the Magnuson Act, and other applicable law. The Regional Administrator will implement through rulemaking any approved harvest guideline, quota, or other management measure adopted under this section.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

[Docket No. 0808061074–81147–01]

**RIN 0648–AW66**

**Fisheries in the Western Pacific; Pelagic Fisheries; Purse Seine Prohibited Areas Around American Samoa**

**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 75-nautical mile (nm) purse seine fishing prohibited areas in the U.S. Exclusive Economic Zone (EEZ) around American Samoa. The proposed rule is intended to reduce catch competition between purse seine vessels and local trolling and longline fleets due to localized stock depletion by purse seine fishing, and minimize gear conflicts between the local longline fleet and domestic purse seine vessels. Currently, there are two 50 nm areas around American Samoa where large fishing vessels (50 ft and longer) are prohibited from fishing. The proposed rule would increase the distance from shore of these prohibited areas for U.S. purse seine vessels only.

**DATES:** Comments on the proposed rule must be received by June 13, 2011.

**ADDRESSES:** You may send a comment on this proposed rule, identified by 0648–AW66, to either of the following addresses:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>; or

• *Mail:* Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

*Instructions:* You must send comments to one of the two addresses

above to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <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 (enter "N/A" in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

In March 2011, the Western Pacific Fishery Management Council (Council) prepared Amendment 3 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP), which describes the issues this rule is intended to address. Amendment 3 also includes an environmental assessment (EA) of the action proposed in this rulemaking. Copies of Amendment 3 and the EA are available from <http://www.regulations.gov> or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, <http://www.wpcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:**

Adam Bailey, Sustainable Fisheries Division, NMFS PIR, 808-944-2248.

**SUPPLEMENTARY INFORMATION:** Pelagic fisheries in the U.S. western Pacific are managed under the Pelagics FEP. The Council prepared Amendment 3 to the Pelagics FEP to address their concerns over potential localized stock depletion, and catch competition between purse seine vessels and the local longline and trolling fleets in the American Samoa Archipelago. This proposed rule would implement the Council's recommendations.

Because 2007 is the most recent year for which we have the most comprehensive information about purse seine activity in the EEZ around American Samoa, 2007 is used as the baseline year for analyzing the potential effects of this proposed rule. Although some more recent purse seine fishery information exists and more recent troll and longline fishery information beyond 2008 is available, the more recent information does not indicate that the areas fished, fishing effort, or landings differed substantially from those

analyzed. Thus, inclusion of more recent information would not change the Council's analyses or management objectives. More recent troll and longline fishery information is included here for completeness.

Local pelagic trolling vessels target skipjack and yellowfin tunas in EEZ waters around American Samoa. These vessels are usually small (about 30 ft (9 m) long), fiberglass or aluminum, outboard-powered, twin-hulled "alia." Alias are not designed for traveling long distances from shore or holding large quantities of fish and are, therefore, limited to day trips in nearshore areas (less than 50 nm (93 km) from shore). From 1982 to 2008, an average of 25.5 metric tons (mt) (56,218 lb) of skipjack tuna and 11 mt (24,251 lb) of yellowfin tuna were caught annually by commercial trolling alia vessels in waters around American Samoa. These vessels may use other fishing methods, such as bottomfish fishing, during any given fishing trip.

Local pelagic longline vessels target albacore in the waters around American Samoa. Longline vessels include alias and larger monohull vessels, and range in length from 25 ft (8 m) to over 90 ft (27 m). The smaller longline alias usually fish within 50 nm of shore, and large longline vessels (50 ft (15.2 m) and longer) travel throughout the EEZ around American Samoa and beyond to fish. Longline gear is deployed in the morning, left to fish, and brought back on board starting in the late afternoon extending into the following morning. The main line averages 40 nm (74 km) in length, is deployed horizontally with floats at the surface, and drifts with the current. Individual vessels usually set one line per day. In 2008, large longline vessels made over 4,500 sets, and landed over 3,500 mt (7,716,181 lb) of albacore, and over 150 mt (330,693 lb) of non-target skipjack tuna.

In 2002, large vessel prohibited areas were established to prohibit large vessels from fishing in the EEZ within approximately 50 nm (93 km) around the islands of American Samoa (67 FR 4369, January 30, 2002). That measure was implemented to prevent gear interactions between small and large pelagic fishing vessels, and to reduce the chances of fish density and catch rate reductions within fishing grounds accessible to the small-scale troll and longline fleets. Reductions in fish density and catch rate could cause small vessels to travel farther to maintain catch rates, resulting in lost revenue due to increased expenses and possible safety-at-sea issues if vessels fish farther from port and for longer durations.

Like the local troll vessels, purse seine vessels also target skipjack tuna. Purse seine vessels are much larger, more sophisticated and more efficient. Tunas, along with other animals, such as pelagic fishes and sea turtles, tend to congregate to naturally-occurring floating objects in the ocean, such as mats of flotsam, logs, or garbage, which fishermen refer to as "fish aggregating devices" (FADs). Roughly half of historical domestic purse seine sets in the WCPO are made on FADs. FADs can be natural, with or without artificial augmentation such as floats, markers, or electronics, or man-made. One purse seine vessel can deploy many FADs to drift around the ocean, until sufficient quantities of fish are accumulated to them. Purse seines are then deployed near or around the FADs. Purse seine vessels currently operating in the western and central Pacific Ocean (WCPO) range in length from 191 to 293 ft (58 to 98 m), with an average length of 225 ft (68 m) and an average gross registered tonnage of 1,341 mt. Fish carrying capacities range from approximately 800 to 1,500 mt (1.8 to 3.3 million lb) per vessel. Recent U.S. purse seine catches of skipjack tuna in the WCPO increased from 60,600 mt (133 million lb) in 2007 to 242,000 mt (533 million lb) in 2009.

Purse seine fishing effort in American Samoa was sporadic from 1997 to 2007, with skipjack tuna catches ranging from zero to 152.2 mt (335,522 lb) and averaging 40.9 mt (90,125 lb) annually over this period. Catches of yellowfin tuna were smaller, ranging from zero to 20.8 mt (45,856 lb), and averaging 7.4 mt (16,314 lb) annually from 1997 to 2007. Conditions for purse seine fishing in EEZ waters around American Samoa are less favorable than other areas, and the average skipjack tuna catch per set is approximately 2.4 mt (5,308 lb). Most domestic purse seine fishing is conducted outside the EEZ around American Samoa, to the north and northwest.

Nevertheless, the Western and Central Pacific Fishery Commission has closed the two major high seas pockets in the western and central Pacific Ocean to all purse seine fishing, and the Pacific Island Parties to the Nauru Agreement are reportedly imposing increasingly stringent measures on distant water fishing nations as a condition of licensing, including bans on high seas fishing in certain areas. Accordingly, the Council is concerned about possible impacts, such as localized fish stock depletion, on other pelagic fisheries if U.S. purse seine vessels were to increase their activity in the EEZ around American Samoa near areas

traditionally fished by pelagic troll and longline vessels. Localized fish depletion occurs when a stock in a small area is reduced by the removal of large amounts of fish, thereby temporarily depleting the availability of the stock to fishing activity or other predators in that area. Research suggests that localized depletion may occur when purse seine fishing activity competes with small-scale fishing operations, triggering catch competition for a single resource in a limited area.

While targeting skipjack tuna, particularly around fish aggregating devices, purse seine vessels also catch juvenile yellowfin and bigeye tuna. Bigeye tuna are currently subject to overfishing, and the harvest of juvenile bigeye by purse seines contributes to recruitment overfishing. The impacts from an increase in juvenile catch of bigeye tuna in the action area could

eventually reduce the number of mature fish in the population, thereby decreasing the number of fish reproduced. This reduction could also decrease the future availability of adult fish for fisheries that target adult bigeye tuna.

This proposed rule would create new prohibited areas only for purse seine vessels (see Fig. 1). Due to purse seine vessels' large skipjack tuna harvests, coupled with their inability to target only mature skipjack and potential impact on juvenile bigeye tuna, the Council is concerned that purse seine fishing in the EEZ around American Samoa has the potential to negatively impact the viability of American Samoa-based small-scale troll fishery. The proposed purse seine fishing prohibited areas are intended to reduce catch competition between purse seine vessels and the small-scale pelagic fleets, and

provide some geographical separation between large longline and purse seine fishing sectors.

Large-scale longline and purse seine gear may drift and interfere with fishing operations; therefore, this proposed rule would create additional 25 nm (46 km) areas of exclusion for purse seine fishing to minimize gear conflicts. This proposed rule would prohibit all purse seine fishing within 75 nm (139 km) of American Samoa. All other measures currently applicable to the purse seine fishery would remain unchanged, including, but not limited to, the existing 50-nm large vessel prohibited areas, vessel and gear marking requirements, reporting requirements, vessel monitoring system (VMS), and the use of safe sea turtle handling techniques.

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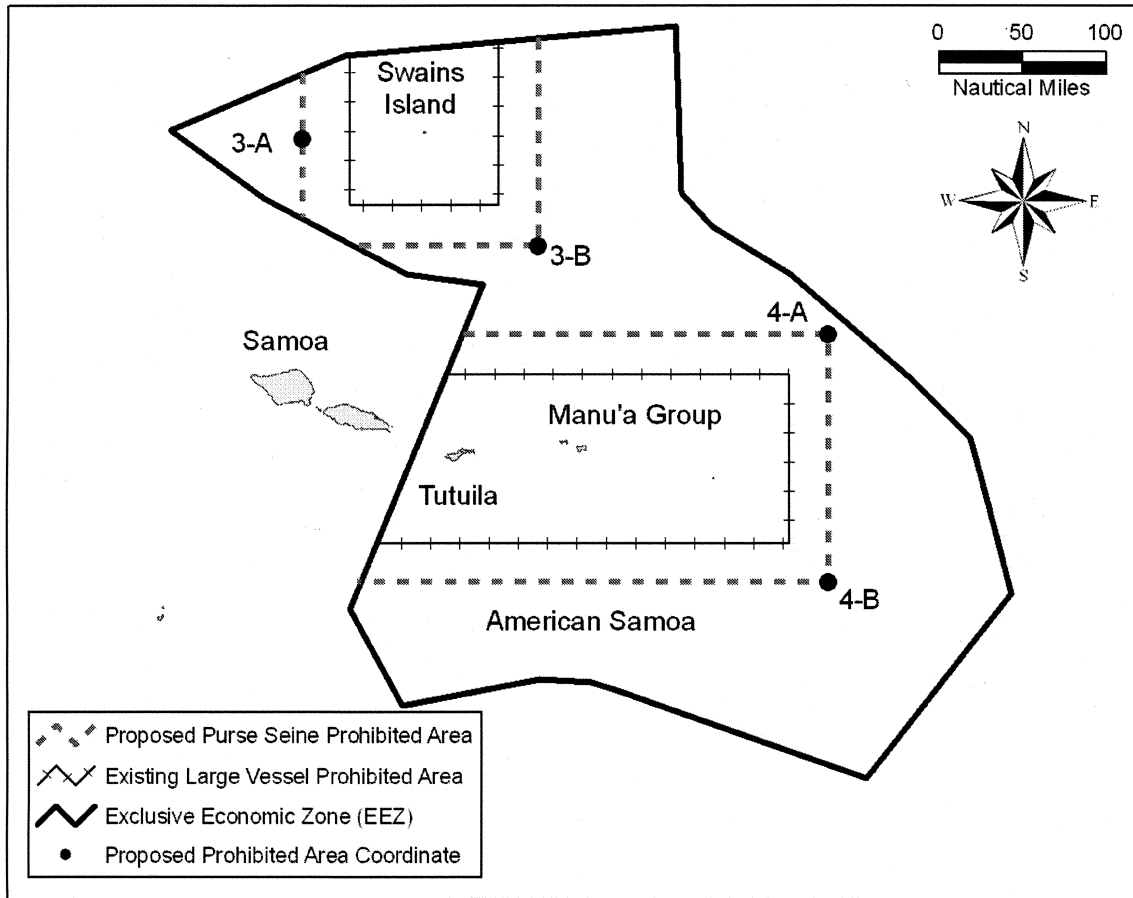


Figure 1. Proposed Purse Seine Fishing Prohibited Areas Around American Samoa.

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This proposed rule is intended to further the intent of the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by ensuring the sustained

participation of American Samoa's small troll and pelagic longline fishing fleets in the pelagic fisheries, along with

the continued operations of the domestic purse seine fleet in the EEZ around American Samoa.

NMFS notes that U.S. purse seine catches from the EEZ around American Samoa have been relatively small compared to the high seas and other areas. Accordingly, NMFS specifically invites public comments addressing whether the action is “necessary and appropriate” according to Magnuson-Stevens Act section 303(a)(1) to accomplish its identified conservation and management objectives, and the state of the science supporting the action.

### 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 Pelagic FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council 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:

“A description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for this rulemaking are found in the preamble to the proposed rule. There are no additional recordkeeping, reporting, or compliance requirements. There are no rules which may duplicate, overlap, or conflict with the proposed rule.

This rule would affect U.S. purse seine vessels licensed under the South Pacific Tuna Treaty. As of 2007, the last year when a complete data set was available, the fleet of U.S. purse seine vessels licensed under the South Pacific Tuna Treaty consisted of 21 vessels at the end of the 2007 calendar year, with only five of these vessels landing fish caught in the U.S. EEZ around American Samoa. By comparison, 37 U.S. purse seine vessels were licensed in the Pacific in 2008, 39 in 2009, and 37 in 2010. However, we have no information about the number of purse seiners that were active in the EEZ around American Samoa.

NMFS internal data reflect that most or all of the businesses that operated the 21 vessels were large entities. The average 1998 gross revenue per purse seine vessel was \$4.7 million, equivalent to \$6.1 million in 2009 dollars. Therefore, most or all of the 38 purse seine licenses in 2009–10 were

held by large entities. NMFS recognizes that newly-permitted vessels may experience lower revenues during the start-up period, and may constitute small entities under the RFA, but it is expected that the purse seine provisions of the rule will only affect large entities. However, it is possible that only one or a few of these fish harvesting businesses met the criteria of small entities; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$4.0 million. Since it is not possible to determine with any certainty how many small purse seine entities, if any, landed fish in American Samoa in 2007, no attempt is made here to determine whether a substantial number of small entities would be impacted by the proposed rule. Instead, this certification is based on a finding that the proposed rule would not have significant economic impacts on affected entities.

The proposed action is expected to benefit the local troll fleet by reducing the likelihood of catch competition and gear conflict. Because the proposed action is not expected to alter the current fishing practices of the troll fleet, it will not have a significant economic impact on the regulated entities.

The proposed action would extend the prohibited fishing areas for U.S. purse seine vessels from 50 to 75 nautical miles (nm) from shore. In 2006, (no purse seine vessels caught fish in 2007), five U.S. purse seine vessels landed a total of 2.7 metric tons (mt) of skipjack tuna and 6.3 mt of yellowfin tuna harvested from inside the U.S. EEZ around American Samoa, yielding an average of 0.54 mt of skipjack tuna and 1.26 mt of yellowfin tuna per vessel. Furthermore, a total of 43,335 mt of skipjack tuna and 8,821 mt of yellowfin tuna (with some bigeye tuna mixed in) were landed in Pago Pago in 2007 by 11 U.S. vessels averaging 3,940 mt (\$4.73 million) per vessel of skipjack tuna and 802 mt (\$962,000) per vessel of yellowfin tuna. Thus, gross receipts for skipjack and yellowfin tunas from the entire EEZ, of which the proposed 25-nm extended area is a subset, represented only 0.01 percent of total skipjack tuna landings, and a potential average loss of \$473 per vessel (based on a price of \$1,200 per mt) if this proposed rule were to prevent those landings. For yellowfin tuna, gross receipts represented only 0.16 percent of total landings and this rule, if implemented, could reduce gross receipts by \$1,540 per vessel, or by a miniscule amount, necessarily making gross receipts from the extended area

also miniscule if this proposed rule were to prevent those landings. Therefore, gross receipts and potential losses as a result of this rule from the extended area are negligible (less than or equal to \$473 for skipjack and \$1,540 for yellowfin). Although NMFS used the best and most recent data available on EEZ catch for 2006, NMFS also looked at an 11-year window from 1997–2007 and chose the two years, 1999 and 2001, with the highest EEZ catch by species, as representative of catch levels for purposes of this analysis. In 2001, 152.19 mt (\$182,628) of skipjack tuna (15 vessels) and for 1999, 20.8 mt (\$24,960) of yellowfin tuna (10 vessels) were harvested from the EEZ. For skipjack tuna, these average annual landings would equate to 10.1 mt per vessel, and 2.1 mt per vessel for yellowfin tuna.

Purse seine vessels are not likely to be negatively affected because approximately 19 percent of fishing effort (assuming an even effort distribution) would be displaced outside the proposed purse seine prohibited area to remaining open areas of the EEZ around American Samoa. Based on historical fishing effort, this means that under the proposed rule, 3.2 fishing days per year of effort that ordinarily would occur inside the proposed purse seine prohibited area could be displaced, and those purse seine vessels may incur more costs in terms of fuel and travel time. However, any impacts would be expected to be minimal due to historically low amounts of participation in the EEZ around American Samoa.

Additionally, there are no disproportionate economic impacts between large and small entities. Fishing activities for small trollers will not be altered under the proposed rule and these small entities may benefit from reduced catch competition and localized depletion. Therefore, for the reasons stated above, there will be no disproportionate effect on the profits, revenues, or costs on small entities relative to large entities.”

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

### List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fishing, Purse seine.

Dated: April 26, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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

**PART 665—FISHERIES IN THE WESTERN PACIFIC**

1. The authority citation for 50 CFR part 665 continues to read as follows:

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

2. In § 665.800, add a definition of “Purse seine” in alphabetical order to read as follows:

**§ 665.800 Definitions.**

\* \* \* \* \*

*Purse seine* means a floated and weighted encircling net that is closed by means of a drawstring threaded through rings attached to the bottom of the net.

\* \* \* \* \*

3. In § 665.802, add a new paragraph (n) to read as follows:

**§ 665.802 Prohibitions.**

\* \* \* \* \*

(n) Use a purse seine to fish within a purse seine fishing prohibited area in

violation of § 665.817, except as allowed pursuant to an exemption issued under § 665.17.

\* \* \* \* \*

4. In § 665.817, add a new paragraph (d) to read as follows:

**§ 665.817 American Samoa pelagic fishery area management.**

\* \* \* \* \*

(d) *Purse seine prohibited areas.* Purse seine fishing is prohibited in the American Samoa purse seine prohibited areas as defined in paragraphs (d)(1) and (d)(2) of this section.

(1) *Swains Island (AS-3).* The purse seine fishing prohibited area around Swains Island consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. latitude	W. longitude
AS-3-A .....	11°12'	172°18'
AS-3-B .....	12°12'	169°56'

Point	S. latitude	W. longitude
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and from Point AS-3-A northward and southward along longitude 172°18' W. until intersecting the U.S. EEZ boundary with Tokelau and Samoa, respectively, and from Point AS-3-B northward along longitude 169°56' W. until intersecting the U.S. EEZ boundary with Tokelau, and westward along latitude 12°12' S. until intersecting the U.S. EEZ boundary with Samoa.

(2) *Tutuila Island, Manua Islands, and Rose Atoll (AS-4).* The purse seine fishing prohibited area around Tutuila Island, the Manua Islands, and Rose Atoll consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. latitude	W. longitude
AS-4-A .....	13°05'	167°01'
AS-4-B .....	15° 36'	167° 01'

and from Point AS-4-A westward along latitude 13° 05' S. until intersecting the U.S. EEZ boundary with Samoa, and from Point AS-4-B westward along the latitude 15° 36' S. until intersecting the U.S. EEZ boundary with Samoa.

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