

**PART 35—[AMENDED]**

24. The authority citation for part 35 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 3801–3812.

**§ 35.1 [Amended]**

25. In § 35.1(g), revise “4015 Wilson Boulevard” to read “801 North Quincy Street”.

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

[Docket No. 010710171-2013-02; I.D. 051401B]

RIN 0648-AL41

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to prohibit certain vessels from fishing for Pacific pelagic management unit species (PMUS) within nearshore areas seaward of 3 nautical miles (nm) to approximately 50 nm around the islands of American Samoa. This prohibition applies to vessels that measure more than 50 ft (15.2 m) in length overall and that did not land pelagic management unit species in American Samoa under a Federal longline general permit prior to November 13, 1997. This action is intended to prevent the potential for gear conflicts and catch competition between large fishing vessels and locally based small fishing vessels. Such conflicts and competition could lead to reduced opportunities for sustained participation by residents of American Samoa in the small-scale pelagic fishery.

**DATES:** Effective March 1, 2002.

**ADDRESSES:** Copies of the Final Environmental Impact Statement for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FEIS) may be obtained from Dr. Charles Karnella, Administrator, NMFS,

Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Copies of the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared for this final rule may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

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

**SUPPLEMENTARY INFORMATION:** A proposed rule was published in the *Federal Register* on July 31, 2001 (66 FR 39475). As discussed in the proposed rule, small vessel fishermen have raised concerns over the potential for gear conflicts between the small-vessel (less than or equal to 50 ft (15.2 m) in length overall) fishing fleet and large longline fishing vessels greater than 50 ft (15.2 m) length overall, hereafter called “large vessels,” targeting PMUS in the American Samoa pelagic fishery, as well as regarding adverse impacts on fishery resources resulting from the increased numbers of large fishing vessels in the fishery. Due to the limited mobility of the smaller vessels, an influx of large domestic vessels fishing in the nearshore waters of the U.S. exclusive economic zone (EEZ) around American Samoa could lead to gear conflicts, catch competition, and reduced opportunities for sustained fishery participation by the locally based small boat operators. Local fishermen and associated fishing communities depend on this fishery not only for food, income, and employment, but also for the preservation of their Samoan culture.

This final rule, is a regulatory amendment under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). It prohibits U.S. vessels more than 50 ft (15.2 m) in length overall from fishing for PMUS within areas 3 nm from shore (i.e., waters regulated by the government of American Samoa) to approximately 50 nm around the islands of American Samoa. The boundaries of the closed areas are defined by latitude and longitude, and are delineated as straight lines drawn point to point, except for those segments that are bounded by the outer boundary of the EEZ around American Samoa. A vessel owner whose longline vessel was registered for use under a Federal longline general permit and made at least one landing of PMUS in American Samoa on or before November 13, 1997, is exempt from this final rule. An exemption may be registered for use with other vessels owned by the same

person; however, exemptions may not be applied to a replacement vessel that is larger than the vessel for which it was originally issued. If more than one person (e.g., a partnership or corporation), owned a large vessel when it was registered for use with a longline general permit, and made at least one landing of a PMUS prior to November 13, 1997, an exemption will be issued to only one person. Exemptions are not transferable between persons.

**Comments and Responses**

NMFS received sets of comments from three different commenters. These comments generally supported this action. NMFS addresses comments that recommended actions not in this final rule below.

*Comment 1:* One commenter recommended that the larger domestic longline vessels operating in the EEZ around American Samoa be required to use vessel monitoring system (VMS) units installed by NMFS to facilitate enforcement of the closed areas around American Samoa.

*Response:* NMFS agrees that VMS would enhance monitoring and enforcement of area closures around American Samoa as demonstrated by its application to the longline area closures around the Hawaiian Islands. However, due to budgetary constraints, NMFS is unable to provide VMS units to all the large longline vessels. NMFS may consider requiring industry to purchase VMS units for those vessels that do not already have them. However, VMS may not be necessary for an effective area closure program with adherence to these new closures and cooperation among the fishermen, both small and large fishing vessel operators and the local community to avoid conflicts and localized depletions of the fisheries.

*Comment 2:* One commenter recommended a more extensive 100-nm closed area around Rose Atoll, a National Wildlife Refuge. An extended area closure would provide a larger buffer zone around the atoll and safeguard against potential groundings of fishing vessels.

*Response:* NMFS believes the 50-nm nearshore closure provides adequate protection for the fauna and flora at Rose Atoll, while striking a balance with the needs of large domestic longline fishing vessels for access to offshore fishing grounds.

The final rule is changed from the proposed rule with respect to the coordinates specified for the boundaries of the closed areas around Swains Island and the remainder of the American Samoa islands (Tutuila Island, the Manu’a Islands, and Rose

Atoll). These coordinates describe generally rectangular shapes approximating the radius of 50-nm circles drawn around each island or island group. Although this change will not affect the intent of this action, i.e., establish 50-nm area closures, it corrects and improves the coordinates of the closure area boundaries that were published in the proposed rule. Some of those coordinates in the proposed rule were determined by utilizing outdated technology and information that resulted in area closures substantially greater than those intended by the Council. In another situation, the coordinates published for the area around Swains Island were based on an earlier Council recommendation for a 30-nm closure.

### Classification

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

On March 30, 2001, NMFS issued a FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. This analysis includes the pelagic longline fishery around American Samoa. The FEIS was filed with the Environmental Protection Agency; a Notice of Availability was published on April 6, 2001 (66 FR 18243). In November 2000, the Council prepared a background document/environmental assessment on the prohibition on fishing for PMUS within closed areas around the islands of American Samoa. Information from this document was used to evaluate and provide the basis for adoption of the preferred alternative contained in the subsequent FEIS.

A FRFA that describes and updates the impact this final rule is likely to have on small entities was prepared and is available from (see **ADDRESSES**). A summary of the FRFA follows.

The need for and objectives of this final rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. No comments on the initial regulatory flexibility analysis or the economic effects of this action were received. This action does not contain reporting and recordkeeping requirements or any compliance requirements that would impact small entities. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

Both large and small longline vessels affected by this final rule are considered to be "small entities" under guidelines

issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of \$3 million. Based on information provided in the FRFA, this rule could potentially impact an estimated 52 active vessel operators, employing 33 small (equal to or less than less than 50 ft) longline vessels and 19 large (greater than 50 ft) longline vessels, two or three of which may qualify for exemption. It could also potentially impact an additional 22 small vessels, and 10 large vessels, which have inactive longline permits. Albacore trolling vessel operators are not anticipated to be significantly impacted as they have not historically fished in the EEZ around American Samoa. Similarly, impacts on tuna purse seine vessel operators are expected to be low as they are believed to have made a total of only eleven sets in the EEZ around American Samoa over the past decade, and will likely continue fishing outside of the closed area.

NMFS considers that this rule provides a balanced approach that allows large domestic vessels, primarily longliners, to continue fishing within two-thirds of the U.S. exclusive economic zone (EEZ) around American Samoa, while maintaining one-third for use by local small-scale fishing vessels. The overall direct economic impacts of this final rule are not quantifiable, as pelagic fisheries interactions are difficult to document and model due to inadequate data, insufficient knowledge of the biology and population dynamics of the resource, and poor understanding of environmental influences. In addition, how various gears fishing in the same time and area compete for local fishery resources and the effects on availability of the target fish are poorly understood. Although most large vessel fishing effort around American Samoa already takes place outside of the closed area and thus will be unaffected by this measure, some large vessel operators continue to fish within 50 nm of shore. This choice is due to several factors, including greater familiarity with those fishing grounds. It is estimated that the costs of this measure to the operators of these displaced large vessels will average between \$1,960 to \$4,900 per vessel. These costs, which are between 1 and 2.5 percent of the average annual operating costs of such vessels, depend largely on the size of the individual vessel. Once these displaced vessels become more familiar with the offshore areas, they may anticipate annual increases in vessel gross revenues which will offset the losses resulting from this closure. Current cannery prices, along

with higher longline catch rates in offshore areas (as indicated by logbook data), may enable them to recoup, or potentially surpass, the losses resulting from this action.

Four alternatives to this final rule were considered and rejected. The first alternative would have closed waters within 50 nm of Tutuila Island, the Manu'a Islands, and Rose Atoll, and within 30 nm of Swains Island. This alternative was rejected because this approach would have provided unequal and insufficient protection for small vessel operators who chose to fish around Swains Island, as well as for those that might decide to become home ported there. The second alternative would have closed waters within 100 nm around all islands of American Samoa and was rejected because the potential negative economic impacts on large vessels was considered to outweigh the possible benefits to the local small-vessel fishing fleet of approximately 30 active vessels fishing generally within 50 nm from shore. The third alternative would have excluded large U.S. pelagic fishing vessels from waters around American Samoa in which the FMP already prohibits longline fishing by foreign vessels (an area approximately 20 nm around each island) and was rejected because such small closed areas would have provided insufficient protection for the local small-vessel fishing fleet. The fourth alternative to this rule was no action. This alternative was rejected as it would not provide any protection to the small vessel fleet.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide (compliance guide) was prepared. Copies of this final rule and the compliance guide will be sent to all holders of permits issued for the western Pacific pelagic fisheries. The compliance guide will be available at the following web site <http://swr.nmfs.noaa.gov/piao/guides.htm>. Copies can also be obtained from the PIAO (see **ADDRESSES**).

On October 1, 2001, NMFS completed an informal Endangered Species Act section 7 consultation on the final rule. The informal consultation concluded

that this action is not likely to adversely affect listed species or critical habitat considered in the March 29, 2001, biological opinion (BiOp) issued by NMFS for authorization of pelagic fisheries under the FMP. The informal consultation stated that there is no information that would indicate that the final rule will alter the potential for impact to listed species or critical habitat from the Federal action as analyzed in the BiOp.

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

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

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

Dated: January 24, 2002.

**William T. Hogarth,**

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

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

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

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

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

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

**§ 660.12 Definitions.**

\* \* \* \* \*

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

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

vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. “Stern” is the aftermost part of the vessel.

\* \* \* \* \*

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

**§ 660.22 Prohibitions.**

\* \* \* \* \*

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

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

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

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

(b) *Tutuila Island, Manu’a Islands, and Rose Atoll (AS-1).* The large vessel prohibited area around Tutuila Island, the Manu’a Islands, and Rose Atoll consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long.
AS-1-A	13° 30’	167° 25’
AS-1-B	15° 13’	167° 25’

and from Point AS-1-A westward along the latitude 13° 30’ S. until intersecting the U.S. EEZ boundary with Samoa, and from Point AS-1-B westward along the latitude 15° 13’ S. until intersecting the U.S. EEZ boundary with Samoa. (c) *Swains Island (AS-2).* The large vessel 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. lat.	W. long.
AS-2-A	11° 48’	171° 50’
AS-2-B	11° 48’	170° 20’

and from Point AS-2-A northward along the longitude 171° 50’ W. until intersecting the U.S. EEZ boundary with Tokelau, and from Point AS-2-B northward along the longitude 170° 20’ W. until intersecting the U.S. EEZ boundary with Tokelau.

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

**§ 660.38 Exemptions for American Samoa large vessel prohibited areas.**

(a) An exemption will be issued to a person who currently owns a large vessel, to use that vessel to fish for Pacific pelagic management unit species in the American Samoa large vessel prohibited management areas, if he or she had been the owner of that vessel when it was registered for use with a longline general permit and made at least one landing of Pacific pelagic management unit species in American Samoa on or prior to November 13, 1997.

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

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

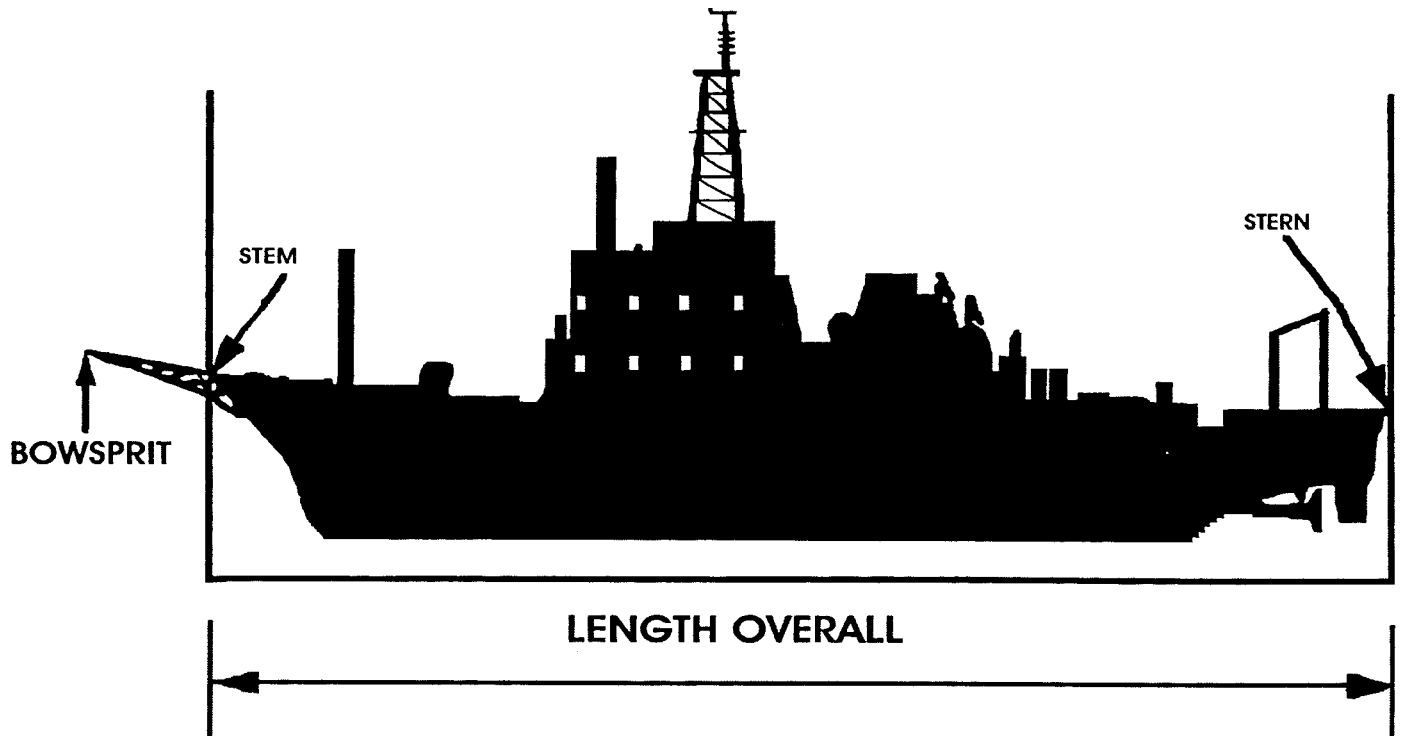
(d) An exemption is valid only for the vessel for which it is registered. An exemption not registered for use with a particular vessel may not be used.

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

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

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

Figure 2 to Part 660 - Length of Fishing Vessel



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