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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 150625552-6043-02]**

**RIN 0648-BF22**

**Pacific Island Pelagic Fisheries; Exemption for Large U.S. Longline Vessels to Fish in Portions of the American Samoa Large Vessel Prohibited Area**

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, NMFS allows large federally permitted U.S. longline vessels to fish in certain areas of the Large Vessel Prohibited Area (LVPA). NMFS will continue to prohibit fishing in the LVPA by large purse seine vessels. The fishing requirements for the Rose Atoll Marine National Monument remain unchanged. The intent of the rule is to improve the viability of the American Samoa longline fishery and achieve optimum yield from the fishery while preventing overfishing, in accordance with National Standard 1.

**DATES:** Effective [*insert date of filing for public inspection at the Office of the FEDERAL REGISTER*].

**ADDRESSES:** The Western Pacific Fishery Management Council (Council) prepared a regulatory amendment that provides background information on this final rule. The regulatory amendment, identified as NOAA-NMFS-2015-0080, includes an environmental assessment and regulatory impact review, and is available from *www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, *www.wpcouncil.org*.

**FOR FURTHER INFORMATION CONTACT:** Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808-725-5176.

**SUPPLEMENTARY INFORMATION:** The American Samoa large vessel prohibited area (LVPA) extends seaward approximately 30-50 nm around the various islands of American Samoa (see 50 CFR 665.806(b)). Federal regulations restrict vessels 50 ft and longer from fishing for pelagic management unit species within the LVPA. The Council and NMFS established the LVPA in 2002 to prevent the potential for gear conflicts and catch competition between large and small fishing vessels. You may read more about the LVPA in the 2001 proposed rule (66 FR 39475, July 31, 2001) and 2002 final rule (67 FR 4369, January 30, 2002).

Since 2002, the American Samoa pelagic fisheries have changed such that the conditions that led the Council and NMFS to establish the LVPA are no longer present. The LVPA

may be unnecessarily reducing the efficiency of the larger American Samoa longline vessels by displacing the fleet from a part of their historical fishing grounds.

To address the current fishery conditions, the Council recommended that NMFS allow federally permitted U.S. longline vessels 50 ft and longer to fish in portions of the LVPA. Specifically, this action allows large U.S. vessels that hold a Federal American Samoa longline limited entry permit to fish within the LVPA seaward of 12 nm around Swains Island, Tutuila, and the Manua Islands. NMFS will continue to prohibit fishing in the LVPA by large purse seine vessels. The fishing requirements for the Rose Atoll Marine National Monument also remain unchanged.

This action allows fishing in an additional 16,817 nm<sup>2</sup> of Federal waters, allowing large longline vessels to distribute fishing effort over a larger area. This may reduce catch competition among the larger vessels and promote economic efficiency by reducing transit costs. This action is intended to improve the efficiency and economic viability of the American Samoa longline fleet, while ensuring that fishing by the longline and small vessel fleets remains sustainable on an ongoing basis. NMFS will continue to prohibit fishing by large longline vessels within the U.S. Exclusive Economic Zone (EEZ) from 3-12 nm

around the islands, thus maintaining non-competitive fishing opportunities for the small-vessel longline fleet. You may find additional background information on this action in the preamble to the proposed rule published on August 25, 2015 (80 FR 51527).

The Council and NMFS will annually review the effects of this final rule on catch rates, small vessel participation, and sustainable fisheries development initiatives. Any future changes would be subject to additional environmental review and opportunity for public review and comment.

#### **Comments and Responses**

On August 25, 2015, NMFS published the proposed rule and draft environmental assessment (EA) for public comment (80 FR 51527). The comment period ended September 24, 2015. NMFS received comments from over 270 individuals, commercial and recreational fishermen, businesses, Territorial government offices (including the Governor of American Samoa and the American Samoa Department of Marine and Wildlife Resources), Federal agencies, and non-governmental organizations. NMFS responds to these comments below.

## **Comments on the Proposed Rule**

*Comment 1:* One commenter requested that NMFS extend the public comment period until after the Western Pacific Fishery Management Council's October 20-22, 2015, meeting in American Samoa.

*Response:* Under Section 304(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to make regulations proposed through the Council process available for public review and comment for a period of 15 to 60 days. NMFS is satisfied that the public comment period of 30 days for this action provided the public with adequate notice and opportunity to be heard. In addition to this public comment period, NMFS and the Council also provided several other opportunities for public input prior to publication of the proposed rule through the Council process. Specifically, the Council provided public input opportunities at its 159th Council meeting held in Guam in March 2014, and at a public hearing in American Samoa in May 2014 (79 FR 22100, April 21, 2014). The Council also provided an opportunity for public input at its 160th Council meeting held in Honolulu in June 2014. At that meeting, the Council deferred action on the issue to hold additional public meetings, in January 2015, with representatives of the American Samoa government,

Swains Island, Tutuila, Manua Islands, and American Samoa fishermen. At its 162nd Council meeting held in Honolulu in March 2015, the Council considered prior public input, provided another opportunity for public input, and made its final recommendation to NMFS as described in the proposed rule and implemented by this final rule. Thus, NMFS is satisfied that three full Council meetings, the January 15, 2015, public meetings, and the 30-day public comment period on the proposed rule provided the public with adequate notice and opportunity to be heard, and that granting an extension to the public comment period until after the Council's October 2015 meeting would yield no new comment or information not previously received.

*Comment 2:* Several commenters said that the American Samoa longline fishery provides food, jobs and supports local businesses and is important to the American Samoan economy.

*Response:* NMFS agrees that the American Samoa longline fishery is important to the American Samoa economy. According to information presented in the EA, the fishery contributed between \$7.2 million and \$13.7 million to the American Samoa economy between 2003 and 2013. The primary source of the fishery's economic contributions to the territory was from sales of fish to the two canneries in

Pago Pago. Although estimates are not currently available, the fishing activity also supports the American Samoa economy by providing wages for captains, crew members and income for the vessel owners. Moreover, the preparations for each trip include the purchase of supplies, including fuel, food for crew, and other items, which are bought locally. Additionally, each vessel requires a variety of local services including but not limited to, electrical engineering, hydraulics, engine maintenance, and vessel repair, all of which contribute to the local economy.

*Comment 3:* Several commenters said that the large longline vessels are all vessels of the United States and should have the same right to fish in American Samoa waters as the small alia vessels.

*Response:* NMFS agrees that all federally permitted American Samoa longline vessels are vessels of the United States. Furthermore, NMFS believes that all fishing sectors should be treated equally, unless there is a legitimate conservation and management need to treat them differently. Here, NMFS is approving an action that exempts large longline vessels from an area that is currently restricted to them, but open to other fishing vessels, because the conditions that originally led to the restriction for the large longline vessels no longer exists. Specifically, NMFS

and the Council established the LPVA in 2002 to separate small longline vessels from large longline and purse seine vessels, and reduce the potential for gear conflict and catch competition between small and large vessels. At that time, the American Samoa longline fishery consisted of about 40 small alia (small fishing catamarans less than 50 ft long) and 25 large conventional mono-hull longline vessels. However, since 2006, fewer than three alia have been operating on a regular basis; and of these, only one was active in 2013 and 2014.

As described in the EA, fewer than 50 other small commercial and recreational vessels fish for yellowfin and skipjack tunas and billfishes in nearshore waters and on offshore banks around American Samoa. Therefore, even accounting for the potential for competition with pelagic troll and recreational vessels, the conditions that led to the establishment of the LVPA in 2002 no longer support the full extent (30-50 nm) of the original prohibited area for longlining.

While the LVPA may benefit a few small alia vessels and these other fishing sectors, the LVPA may be further reducing the fishing efficiency of large longline vessels in combination with reduced catch per unit of effort

(CPUE), lower sale price of fish, and increasing operational costs.

This action would allow large longline vessels in American Samoa to fish within the LVPA to as close as 12 nm of shore around Tutuila, Aunuu, the Manua Islands, and Swains. Waters from the shoreline to 12 nm around these islands, and within the Rose Atoll Marine National Monument, will remain closed to large longline vessels. This would continue to afford all other vessels and fishing sectors adequate spatial separation from the large vessel longline fleet and minimize the potential for catch competition and potential for gear interactions. This exemption applies only to large longline vessels of the United States that hold an American Samoa limited entry longline permit under 50 CFR 665.801.

*Comment 4:* Several commenters said they work and earn wages on longline vessels to support their families.

*Response:* Comment noted. See response to Comment 2.

*Comment 5:* Several commenters said the LVPA closure areas have been under-utilized by the alia longline fleet for more than 10 years.

*Response:* See response to Comment 3.

*Comment 6:* Several commenters noted that because fuel prices are now at an all-time low, reducing the cost of

trips, including fuel cost is no longer a justification for this action.

*Response:* NMFS is approving an action to exempt large longline vessels from a portion of the existing LVPA because the conditions that led to the establishment of the closure are no longer present or necessary to prevent gear conflict and catch competition. Additionally, this action could improve efficiency in fishing activities by large longline vessels. While fuel price may currently be lower than in the past, it is subject to fluctuation due to multiple global and economic factors. Further, the success of longline fishing depends on being able to follow the fish, especially if they are abundant within the LVPA or pass into the LVPA. Because cost of fuel continues to be the principal expense for longline fishing, this action could improve trip profits by lowering fuel costs as large longline vessels could fish closer to port than currently allowed.

*Comment 7:* Several commenters noted that fuel prices fluctuate and allowing the large longline vessels to fish closer to home would result in a small cost savings in fuel.

*Response:* See response to Comment 6.

*Comment 8:* Several commenters said that the action would improve safety at sea for small fishing vessels because large vessels would now be in the vicinity to assist small vessels that get into trouble.

*Response:* Comment noted.

*Comment 9:* Several commenters said that there are higher catches and better catch rates of pelagic fish by recreational sectors in American Samoa compared to neighboring countries that do not have a LVPA and, therefore, opposed the action.

*Response:* Within the national waters of neighboring South Pacific countries, NMFS has no available information on the catch rates of pelagic species other than by longline and purse seine vessels. The available information for these fisheries indicates that catch rates for albacore have declined across most of the South Pacific, and the poor economic conditions faced by the American Samoa fleet were also experienced by most of the other longline fishing nations in the South Pacific. Through this action, NMFS expects that longline vessels will have the opportunity to improve catch rates that have been steadily declining, and to achieve optimum yield, while still maintaining a reduced area closure to protect the needs of other fishery participants, including recreational fishers.

*Comment 10:* Several commenters said that under the action, longline vessels would destroy coral reef ecosystem resources and breeding grounds for other fish species.

*Response:* While the commenter did not specify how longline vessels would destroy such marine resources, NMFS assumes that the commenter was referring to the potential for entanglement on coral reefs. NMFS notes that longline fishing in American Samoa does not occur over coral reefs, but rather much farther offshore and at depths (100-400 m) well below the photic zone where most coral reefs occur. Waters from the shoreline to 12 nm from shore will remain closed to large longline vessels, and there is little, if any, coral reef habitat beyond 12 nm. In addition, longliners actively avoid shallow coral reef habitat, including fish breeding grounds, in order to prevent gear loss through entanglement with the bottom substrate. The American Samoa longline fishery does not target nor incidentally catch coral reef fish species.

*Comment 11:* Several commenters said that longline fishing has dramatically reduced fish populations around American Samoa and that this action would result in overfishing and deplete fish stocks.

*Response:* NMFS disagrees. While the commenters did not identify the fish populations that have been reduced or

would become subject to overfishing because of the action, the American Samoa longline fishery primarily targets albacore. The most recent stock assessment summarized in the EA indicates that this population is not subject to overfishing and is not overfished. Additionally, stock assessments for most species incidentally harvested in the fishery, including yellowfin, skipjack, and billfish indicate that these species are also not subject to overfishing or overfished. Bigeye tuna is incidentally harvested, and is subject to overfishing. Nevertheless, because tunas, billfish, and other species caught by the American Samoa longline fishery are comprised of larger highly migratory populations, NMFS does not expect this action to contribute to overfishing or localized depletion of these stocks. See also response to Comment 12.

*Comment 12:* Several commenters said that there are no data to support claims that the action would result in overfishing or have a detrimental effect on alia longline vessels or recreational sport fishing vessels.

*Response:* NMFS does not expect this action to result in overfishing of any pelagic species nor have a detrimental effect on alia longliners or sport fishing vessels. Skipjack and yellowfin together comprise about 95 percent of the troll catch, the primary fishing method of

sport fishing vessels. Furthermore, catch rates of these two species show no signs of decline over a 30-yr period, which encompasses the period of expansion of the American Samoa longline fleet. South Pacific albacore, the primary target of both alia and large longline vessels, is not subject to overfishing and is not overfished. Similarly, skipjack and yellowfin are not subject to overfishing nor overfished, and NMFS does not expect this action to result in a change in the status of these species. Bigeye tuna in the western and central Pacific Ocean, which is incidentally harvested in the American Samoa fishery, is currently subject to overfishing, but is not overfished, and is managed under conservation and management measures adopted by the Western and Central Pacific Fisheries Commission, and implemented by NMFS. The American Samoa longline fishery annually landed fewer than 200 mt of bigeye tuna since 2005 with 85 mt landed in 2013.

*Comment 13:* Several commenters said that the action would result in a higher risk for oil spills and marine debris, but did not explain why.

*Response:* Based on available information presented in the EA, NMFS does not expect a change in the level of risk for oil spills or marine debris through this action. Allowing large longline vessels to fish within a portion of

the LVPA will not lead to an increase in the number of vessels participating in the fishery or change vessel operations in a manner that would lead to greater discharge of oil or fuel into ocean waters. Further, the action does not present any greater danger of longline vessels grounding, or habitat damage compared to the status quo because there are no areas in the EEZ seaward of 12 nm shallow enough for a vessel to run aground.

*Comment 14:* One commenter felt that the action would endanger the survival of newly born humpback whale calves through entanglement and drowning.

*Response:* NMFS disagrees. Humpback whale calving and mother and calf pairs occur in shallow coastal waters within 12 nm, which would remain closed to large longline vessels. Beyond 12nm, the movement of longline vessels will not change the amount of fishing effort or vessel operations and would not elevate the risk of entanglement. There have been no recorded or observed interactions with humpback whales in the American Samoa longline fishery.

*Comment 15:* Several commenters expressed the concern that public submissions on the action provided incorrect and/or misleading information regarding the regulatory protections for sea turtles and marine mammals in the

action area, as well as impacts to these species by the American Samoa longline fishery. The commenters noted that NMFS has implemented regulations to protect marine resources, and they supported the action.

*Response:* Comment noted.

*Comment 16:* One commenter said that the action could affect the composition and character of the marine environment around American Samoa, including marine populations protected by the National Marine Sanctuary of American Samoa.

*Response:* While the commenter did not specify how the action would affect the composition and character of the marine environment, longline fishing by large longline vessels has been occurring since the mid-1990s within the area where the LVPA now exists. NMFS has no observed or reported information indicating that longline fishing from large longline vessels has resulted in negative impacts to the composition and character of the marine environment around American Samoa, either before or after the establishment of the LVPA in 2002. Because the action would continue to prohibit longline fishing by large vessels from occurring within 12 nm of American Samoa, NMFS does not expect the action would result in such changes.

The American Samoa longline fishery does not operate within the boundaries of the National Marine Sanctuary of America Samoa, which extends from the shoreline out to a distance of approximately 3 nm. The American Samoa longline fleet targets highly migratory pelagic species such as albacore at considerable distances from the shoreline seaward of the outer-boundary of the American Samoa sanctuary. Because the action continues to prohibit longline fishing by large vessels from occurring within 12 nm of American Samoa and within the Sanctuary, NMFS does not expect the action would affect marine populations protected by the sanctuary.

*Comment 17:* Several commenters said that although there are only a few active alia longline vessels, the action would make it even more difficult for small alia vessels to re-enter the fishery because they would not be able to compete economically with the large longline vessels.

*Response:* Alia fishing vessels operated for years before and after the arrival of large longline vessels in American Samoa in the 1990s. Based on information available, NMFS believes the reduced participation of the small alia vessels in the fishery was driven primarily by low catch rates of albacore experienced across the South

Pacific region combined with high economic and other operating costs. See EA section 3.1.4.1.

The Council has been working with the American Samoa government on several fishery development initiatives, including the design of a new multi-purpose alia fishing vessel and training in fresh fish handling for local and export markets. Smaller, alia-type vessels are likely better suited to conduct fresh fish operations targeting yellowfin and bigeye tunas and, as such, would minimize the potential economic competition with larger longline vessels targeting albacore. Data indicates that gear competition between large longline and alia vessels has not been a contributing factor to the decline of alia vessels. Accordingly, NMFS has no reason to believe that the action will adversely affect reentry of fishery participants into the alia fishery. See also response to Comments 3 and 24.

*Comment 18:* Several commenters expressed concern that the action would be detrimental to the recreational fishery and the growing sportfish tourism industry in American Samoa.

*Response:* NMFS has no information to suggest that the action would adversely affect other fishery participants. NMFS and the Council established the LPVA in 2002 to separate small longline vessels from large longline and

purse seine vessels, and reduce the potential for gear conflict and catch competition. At that time, the American Samoa longline fishery consisted of about 40 small alia and 25 large conventional mono-hull longline vessels. Since then, there has been an increase in participation by the recreational and sport fishing fisheries, which target species such as skipjack tuna, yellowfin tuna, mahimahi, wahoo and billfish. These species are only a minor component of the catch by American Samoa longline vessels. Information in the EA does not indicate longline fisheries are negatively affecting troll CPUE. Specifically the data showed that increased longline catches of skipjack and yellowfin are coincident with higher CPUEs of the same two species in the troll fishery. This suggests that the CPUEs for both fisheries are dependent on regional availability of skipjack and yellowfin tuna. Similar studies from other parts of the region and referenced in the EA showed no evidence of interactions and catch competition between troll and longline vessels. See also response to Comment 9.

Sport fishing vessels generally operate within 12 nm from shore and in offshore areas around banks and seamounts, which longline vessels actively avoid to reduce the potential for longline gear tangling on bottom substrates. Furthermore, sport fishing and subsistence

fishing beyond 12 nm from shore does not occur at sufficient frequency or concentration to justify the continued restriction of large longline vessels out to the full 50 nm to control the potential for gear conflict or catch competition. Although NMFS allows recreational and non-commercial fishing within the Rose Atoll Marine National Monument beyond 12 nm with a federal permit, all commercial fishing, including longline fishing is prohibited throughout the monument out to a distance of approximately 50 nm around the atoll.

*Comment 19:* Several commenters thought that the action would affect the ability of recreational and subsistence fishermen to catch fish and feed their families.

*Response:* The commenters did not explain how the proposed action would affect their ability to catch fish. There is a wide variety of reef fish, deep bottomfish, and various pelagic species that will remain accessible exclusively for all fishermen with vessels smaller than 50 ft. NMFS does not expect the action would negatively impact the ability of these fishing sectors to catch fish for recreation or subsistence, as large longline vessels would continue to be prohibited from fishing within 12 nm around American Samoa.

*Comment 20:* Several commenters thought that allowing large longline vessels to fish on the banks and seamounts within the LVPA including South Bank, East Bank, Two Percent Bank, South East Bank, and North East Bank would deplete fish stocks and result in damage to bottom habitat.

*Response:* NMFS disagrees. See responses to Comments 10 and 11.

*Comment 21:* Several commenters said that existing federal regulations require American Samoa longline vessels to deploy all hooks below 100 m in depth to minimize interaction with sea turtles. Because of this existing gear regulation, longliners will avoid shallow banks and seamounts used by small vessels to minimize potential for gear loss.

*Response:* NMFS agrees. Federal regulations governing the American Samoa longline fishery at 50 CFR Part 665 Subpart F require all longline hooks to be set at least 100 m deep. This is accomplished by requiring a minimum float line length of 30 m, together with a minimum of 70 m of blank mainline (no hooks) between each float line and the first branch line in either direction along the mainline. Both small and large longline vessels actively avoid bottom substrates to prevent gear entanglement and loss. See also response to Comment 10.

*Comment 22:* Several commenters said that albacore and other tuna species caught by the American Samoa longline fleet are highly migratory species and do not remain within the confines of the existing LVPA or the proposed exempted area and, therefore, there are no data to support public comments saying the longline fishery is detrimental to alia and sport fishing fleet.

*Response:* NMFS agrees. Not only do these pelagic species have an extensive migratory range, there are seasonal abundance trends that influence the catchability of these species throughout the year. This affects both large and small longliners. See also responses to Comments 11 and 18.

*Comment 23:* Several commenters felt that the action would result in gear conflicts between large longline vessels and small longline, troll, and recreational fishing vessels because NMFS and the Council underestimated the number of small vessels currently operating within the LVPA.

*Response:* A purpose in establishing the LVPA in 2002 was to separate small longline vessels from large longline and purse seine vessels to reduce the potential for gear conflict and catch competition. NMFS believes that the information presented by the Council and in the EA

indicates that the conditions for the conservation and management need in establishing the LVPA no longer exist to the degree that requires its continuation. NMFS, moreover, believes that the 12 nm prohibition applied to large longline vessels provides adequate separation between small fishing vessels from the large longline and purse seine vessels, while still allowing for optimum yield for all fishing sectors.

Furthermore, the frequency and concentration of small alia longline vessels and small non-longline vessels fishing seaward of 12 nm is lower than that of the large longline vessels. Many of these small vessels are recreational and do not operate on a daily basis. The EA discusses the potential impacts of fishery participants, including impacts to the small vessel fleets and indicates this action will continue to provide for sufficient spatial separation between small and large vessels. The Council and NMFS used the best available information provided by the American Samoa Department of Marine and Wildlife Resources (DMWR) creel survey to estimate the number of vessels operating in the LVPA. See also response to Comment 18.

*Comment 24:* One commenter noted that two large local U.S. longliners already have permission to fish in the

LVPA, and so there is nothing new about larger longline vessels fishing in the area.

*Response:* Comment noted. As part of the establishment of the LVPA regulations, NMFS exempted two individuals and their vessels from the LVPA restrictions on the basis that these individuals had made at least one landing of pelagic management unit species (MUS) with those vessels in the LVPA area on or prior to November 13, 1997. See 50 CFR 665.818. NMFS has no information that the activity of these two vessels has created gear conflicts or affected the catches of smaller vessels within the LVPA.

*Comment 25:* Several commenters thought that the action would negatively affect the American Samoan Government's plan to build a fleet of 40 ft super alia intended to increase local indigenous Samoan participation in fishing in the LVPA.

*Response:* Based on information provided in comments submitted by the Government of American Samoa, the government has received a technical assistance grant from the U.S. Department of the Interior for the development of a prototype-fishing vessel called a super alia. Because the vessel has yet to be designed, constructed, or tested, and because additional capital would be required to build a fleet of these super alia envisioned under the Government's

plan, NMFS cannot predict what changes, if any, may occur in the commercial fisheries because of this grant. However, the Council and NMFS are prepared to work with the Government of American Samoa to address potential regulatory and other impediments to sustainable fisheries development initiatives, once a super alia fleet is fully developed and the Government of American Samoa's alia program is implemented.

*Comment 26:* Several commenters said that a super alia fishing fleet is not realistic because fishermen will run into the same problems the previous alia fleet experienced, including high operation costs for longline gear, fuel, and bait.

*Response:* Comment noted. See responses to Comments 17 and 25.

*Comment 27:* Several commenters noted that in the Deed of Cession with the chiefs of the islands of Tutuila, Aunuu, and Manua Islands, the United States promised to protect the lands, preserve the traditions, customs, language and culture, Samoan way of life, and the waters surrounding the islands, and that all the science and environmental analysis should not supersede the rights of the people of these islands.

*Response:* NMFS' decision to approve the Council's recommendation to modify the LVPA is consistent with its authority under the Magnuson-Stevens Act to manage fishery resources in the U.S. EEZ. This action relieves an area restriction that applied to certain large commercial fishing operators within a portion of the US EEZ (generally 12 to 50 nm from shore), based on NMFS' determination that the restriction no longer serves the conservation and management purposes for which it was developed. Importantly, this action preserves full access to these waters by smaller vessels, including alias, sport fishers, and artisanal fishing vessels, throughout the EEZ, as authorized under the existing American Samoa Archipelagic Fishery Ecosystem Plan and implementing regulations. Further, this action does not alter the authority of American Samoa to manage its coastal fisheries to the extent authorized under the Magnuson-Stevens Act, 16 U.S.C. 1856.

NMFS took particular care to ensure that the views of American Samoa stakeholders, including fishermen, fishing communities, and the American Samoa government, were solicited and taken into account throughout the development of this action. Consistent with the Magnuson-Stevens Act, the Council and NMFS provided a number of opportunities for

American Samoa's participation during all material phases of the development of this measure, including Council meetings to discuss the amendment, the Coastal Zone Management Act (CZMA) process, and public meetings held in American Samoa (see response to Comment 1).

*Comment 28:* One commenter expressed support for the purse seine fleet.

*Response:* Comment noted. This action does not change the existing prohibitions against purse seine fishing in the LVPA.

*Comment 29:* One commenter felt that the action is based on incomplete data because the Council based its decision solely on the decrease of the alia longline fishing activities, and did not consider fishing activities by troll and bottomfish vessels.

*Response:* NMFS disagrees that the Council did not consider troll and bottomfish vessels. The EA contains detailed description of fishing sectors of American Samoa, including catch and effort by the troll and bottomfish fisheries, and other small boat fisheries. See response to Comment 23.

*Comment 30:* One commenter said the Council did not adequately consult with stakeholders prior to recommending the proposed action at its 162nd meeting in March 2015.

*Response:* See response to Comment 1.

*Comment 31:* One commenter thought that the proposed action ignores the fact that there are significant fishing activities in the exemption areas, especially in the vicinity near the banks.

*Response:* NMFS disagrees. The EA identifies the types of fisheries that occur within the LVPA around American Samoa, including the alia longline fishery, troll and bottomfish fishery, and recreational fisheries. The EA also describes the number of vessels in each fishery, and provides catch and effort information and fishing location, where data is available. Moreover, the EA also provides an estimate of troll catch from the offshore banks as a percentage of total troll catch of American Samoa and analyzes the effects of the action on those fishing sectors.

*Comment 32:* One commenter felt that NOAA should increase the collection of information about seabirds and other protected species, by expanding current observer coverage as this fishery expands in size and area.

*Response:* NMFS strives to maintain an annual observer coverage rate of at least 20 percent in the American Samoa longline fishery, and has steadily increased observer coverage from approximately 6 percent in 2006 to nearly 20

percent in 2014. In some years, NMFS has been able to cover over 33 percent of all longline trips in the American Samoa longline fishery. However, NMFS' ability to increase and maintain observer coverage greater than 20 percent will be subject to available funding. NMFS also notes that the fishery may not increase in the total number of vessels because the number of available fishing permits is limited.

*Comment 33:* One commenter thought that, although the action would not alter fishing activities within the Rose Atoll Marine National Monument, the change may result in greater likelihood and frequency of derelict fishing gear washing ashore and recommends NMFS include measures to minimize derelict fishing gear.

*Response:* NMFS is unaware of any instances where such an event has occurred. Based on information provided in the USFWS Rose Atoll National Wildlife Refuge Comprehensive Conservation Plan (May 2014), the most significant derelict fishing gear is from the grounding of a Taiwanese vessel, which occurred in 1993, over 20 years ago. The plan also notes that observations of other forms of marine debris at Rose Atoll are rare, and do not constitute a significant visual presence in the atoll. NMFS does not expect this action to change the amount of fishing effort or other vessel operations, and is unlikely to increase frequency of

derelict gear. For these reasons, NMFS is satisfied that additional measures to minimize derelict fishing gear from American Samoa longline fisheries are unnecessary at this time.

#### **Comments on the Draft Environmental Assessment**

*Comment 34:* One commenter said that NMFS should not open a currently closed area without a full environmental impact statement and additional sea turtle mitigation measures, including increased observer coverage and hard interaction limits.

*Response:* Based on the analysis presented in the EA, NMFS has determined that the proposed action would not result in significant impacts affecting the quality of the human environment and, therefore, does not warrant the preparation of an environmental impact statement. The analysis presented in the EA incorporates the best available scientific and commercial information on the fishery and its impacts on the environment, including sea turtles. Specifically, along with other relevant information, the EA considers the analysis from an October 30, 2015, biological opinion (2015 BiOp) that NMFS developed as part of a formal consultation under the Endangered Species Act. (See also responses to Comments 35-37).

Although participation and effort in the American Samoa longline fishery has varied and declined in recent years, NMFS expects that the level of participation, in terms of fleet-wide sets and hooks deployed, likely will return to historic levels. For this reason, the analysis in the 2015 BiOp anticipated the American Samoa longline fishery operating up to the level seen in 2007 when 29 vessels deployed 5,920 sets and approximately 17,554,000 hooks, and evaluated the potential environmental effects of the fishery operating at these levels. Additionally, NMFS anticipates the continued placement of observers on approximately 20 percent of all longline trips.

In the 2015 BiOp, NMFS concluded that the continued operation of the American Samoa longline fishery under existing federal regulations, and effort levels expected under the proposed action, is not likely to jeopardize the continued existence of any ESA-listed species, including sea turtles. NMFS based this conclusion on a thorough assessment of the effects of the action, together with the environmental baseline and the cumulative effects. The EA analysis considered the information presented in the 2015 BiOp and found that the expected level of fishery interactions under the proposed action would not result in

significant population level effects for any ESA-listed species or their habitats, including sea turtles.

*Comment 35:* One commenter said that, based on its calculations from information contained in the draft EA, the American Samoa longline fishery has killed approximately three adult female leatherback sea turtles each year for four years.

*Response:* NMFS disagrees with the commenter's conclusion about leatherback mortality in the action. At the time that NMFS published the proposed rule, the agency was undergoing consultation pursuant to Section 7 of the ESA for the American Samoa pelagic longline fishery. As part of the consultation process, NMFS prepared a memorandum dated May 8, 2015, (amended July 21, 2015) under the authority of sections 7(a)(2) and 7(d) of the ESA for the proposed continued operation of the fishery while consultation was ongoing. The draft EA incorporated information on the estimated leatherback take from this memorandum, and projected that, by the completion of consultation in October 2015, the longline fishery could be expected to interact with 27 leatherbacks, the equivalent of one adult nesting female mortality every 1.566 years. Since publication of the proposed rule, NMFS completed the 2015 BiOp, which considered all relevant commercial and

scientific information available on sea turtles, and which supersedes the information in the May 8, 2015 memorandum as amended on July 21, 2015. NMFS' final EA considers the information found in the 2015 BiOp.

In the 2015 BiOp, NMFS estimated anticipated future interactions between the fishery and leatherbacks sea turtles. NMFS used previous, observed interactions and anticipated effort in the fishery to predict the future level of take. NMFS then used a discounting methodology to analyze the impact of this level of take on the leatherback population.

NMFS based the interaction estimates in the BiOp on a random sample of longline trips on which scientific observers are deployed. Relying on Table 7 of the 2015 BiOp, NMFS estimates 36 total leatherback interactions between 2011 and mid-2015 (based on eight observed interactions). NMFS used these interactions to calculate an average rate of interaction. That was then multiplied by the anticipated annual effort in the fishery to determine that 23 leatherback interactions are anticipated annually. NMFS then applied a leatherback mortality rate of 70.6, based on observed mortalities, injuries, and applying the NMFS post-hooking mortality criteria (Ryder et al. 2006).

Accordingly, NMFS anticipates 23 interactions to

result in 16.28 ( $23 \times 0.76 = 16.28$ ) leatherback sea turtle mortalities. However, many of these interactions occur with juvenile sea turtles that already experience low survival rates even in the absence of fishing. Therefore, NMFS must apply a discount to the expected rate of annual interactions in order to estimate the risk that the proposed action would pose to the western Pacific leatherback sea turtle population.

NMFS first estimated the number of adult females or adult nester equivalents (ANE) harmed through injury or death related to the fishery. The American Samoa longline fishery interacts with male and female leatherback sea turtles, and they are predominantly juveniles (Van Houtan 2015). To estimate the number of adult females that could potentially be killed by 23 interactions, two adjustments were applied to the calculation above: (1) the proportion of females in the adult population (using a ratio of 65 percent females to 35 percent males); and (2) the adult equivalent represented by each juvenile interaction. The adult equivalent was determined using the discounting method (Van Houtan 2013, 2015). This discounting method summarized in the 2015 BiOp incorporates an exact demographic match to the observed interactions, and relies on length measurements by fishery observers of bycaught

turtles, and conversion of these recorded lengths to ages. Therefore, of the estimated 16.28 leatherback sea turtle mortalities, NMFS estimates 10.58 would be females ( $16.28 \times 0.65 = 10.58$ ). Applying the adult equivalent discounting method (Van Houtan 2013, 2015), NMFS estimates 23 leatherback interactions would result in the mortality of 0.55 adult females annually, or one adult female mortality every 1.8 years from a nesting population of 2,739 females (Van Houtan 2015). This represents less than 0.0002, or 0.02 percent of the nesting population in the region. NMFS considers this level of impact to the population to be negligible, and it will not adversely affect the species' ability to survive, successfully reproduce, and recover.

NMFS believes that the commenter made several assumptions in the calculations that led to a flawed conclusion on sea turtle mortality. The commenter assumed, for instance, an observer coverage rate of 20 percent over the four-year period, and then apparently multiplied the observed number of injured and killed since 2010 by a factor of five. The commenter incorrectly applied the NMFS post-hooking mortality criteria of 70.6 percent (Ryder et al. 2006) to the expanded number of injured turtles.

The mortality rate is an average rate where mortality is 100 percent and injuries are assessed at a rate between

0 and 100 percent, based on the observed hooking or entanglement injuries and using the NMFS post-hooking mortality criteria (Ryder et al. 2006). Therefore, the mortality rate of 70.6 percent already accounts for all observed mortalities. Thus, applying this rate to the expanded, injured turtle count is an incorrect use of the mortality rate. Furthermore, the mortality rate of 70.6 percent is a conservative mortality rate because NMFS did not separate out the larger turtles from the younger, smaller turtles that have a much higher mortality rate. The five smaller turtles were boarded dead (a mortality rate of 100 percent) and the three larger turtles that were not boarded had a mortality rate of 21.7 percent. When using these individual mortality rates in the ANE calculation, the ANE is 0.33 rather than 0.55. While NMFS provided exact measurements for two turtles, it is incorrect to assume the other turtles were adults. In fact, the fishery predominantly interacts with juvenile turtles; of the eight observed interactions with leatherbacks in this fishery, five were juveniles and three were adults.

NMFS, therefore, believes that the data and analysis contained in the 2015 BiOp and EA are the best available science on which to base determinations of the impact by the fishery to protected marine species.

*Comment 36:* One commenter said that the draft EA does not adequately discuss the impacts to endangered leatherback sea turtles from the fishery and its expansion into the LVPA.

*Response:* The analysis presented in the final EA incorporates the best available scientific and commercial information on the fishery and considers the 2015 BiOp, which NMFS developed as part of a formal consultation under the Endangered Species Act. The analysis in the 2015 BiOp indicates that under the proposed action the fishery could potentially interact with 23 leatherback sea turtles each year. Genetic analysis of three leatherback turtles caught incidentally in the American Samoa longline fishery indicate that they are from the Western Pacific genetic stock, which is comprised of nesting populations in Papua-Barat, Indonesia, Papua New Guinea and Solomon Islands.

Based on the analysis in the 2015 BiOp, NMFS estimates the longline fishery would cause 0.55 adult female mortalities annually. This is the equivalent of one adult female mortality every 1.8 years from a nesting population of 2,739 females in the Western Pacific population. (Van Houtan 2015). This represents less than 0.0002 (0.02 percent) of the nesting population in the region. In the 2015 BiOp, NMFS concluded that this anticipated level of

interactions and associated adult female mortalities under the proposed action is not likely to jeopardize the continued existence of leatherback sea turtle populations. The analysis in the EA further indicates that 0.55 adult female mortalities annually or 1.65 adult female mortalities over a 3-yr period is not likely to pose an appreciable risk or result in significant impacts to leatherback sea turtle populations in the Western Pacific region.

*Comment 37:* One commenter said that the draft EA failed to assess adequately the proposed action and several upcoming actions all of which will increase risk of interactions with sea turtles. First, the proposed action will allow large longline vessels into pelagic habitat around American Samoa most likely occupied by leatherback sea turtles. Second, the proposed rule will increase fishing effort as measured by area of the activity and by hooks deployed. Finally, the proposed action's risk of increasing interactions must be considered with the Council approved amendments that create a shallow-set longline fishery by eliminating the depth requirement for hooks and increasing the swordfish retention trip limit.

*Response:* As discussed in response to comment 34, the final EA considers analysis presented in the 2015 BiOp,

which estimates population level impacts to sea turtle populations resulting from the proposed action and in anticipation of increased fishing effort in coastal areas. After analyzing the proposed action, including the environmental baselines and cumulative effects, and its impact on protected species, NMFS concluded in the 2015 BiOp that the action is not expected to cause an appreciable reduction in the likelihood of both the survival and recovery of leatherback sea turtles in the wild, or other protected species in the action area. The final EA includes this information. In addition to impacts on protected resources, the final EA also analyzed whether the action would significantly affect the human and natural environment. Based on the analysis, NMFS determined that the impacts of the action were not significant (see Section 4 of the final EA). NMFS has no information to believe that the partial reopening of an area currently closed to longlining will result in unacceptable impacts to sea turtles or other protected species.

The targeting of swordfish generally requires deployment of hooks shallower than 100 meters. However, as described in the draft EA, current federal regulations require all hooks set by the fishery to be set deeper than 100 meters in order to minimize the risk of sea turtle

interaction. Thus, current federal regulations prohibit American Samoa longline vessels from targeting swordfish with hooks set shallower than 100 meters in the American Samoa EEZ.

NMFS notes that the Council has taken action to recommend creating a shallow-set longline fishery in American Samoa. The Council, however, has not yet developed an amendment or associated environmental impact analyses describing such a fishery. Should the Council propose that action as an amendment, NMFS would conduct all necessary analyses to determine whether the action complies with the Magnuson-Stevens Act and all applicable laws. At this time, however, NMFS is satisfied that the final EA adequately assesses the cumulative impact of the Council action and all reasonably foreseeable actions.

#### **Changes from the Proposed Rule**

In this final rule, NMFS made minor housekeeping changes in the tables of boundary coordinates in § 665.818(b). In the proposed rule, NMFS had labeled the points for each coordinate with simple numbers. Using the same numbers for each table could lead to confusion among fishermen and enforcement officials, so in this final rule, NMFS added prefixes for boundary point labels that are different for each island or island group. Specifically,

the Tutuila coordinates carry the prefix "TU-," the Manua coordinates carry the prefix "MA-," and the Swains coordinates carry the prefix "SW-."

Also in the proposed rule, in the table of boundary coordinates for Swain's Island at § 665.818(b)(3), NMFS only listed degrees and minutes in defining the latitude and longitude for each coordinate, and inadvertently omitted the seconds. In this final rule, NMFS corrects that omission by including degrees, minutes, and seconds for each boundary coordinate.

The final rule also corrects the first instance of the coordinate for MA point 1. The proposed rule listed the W. long. coordinate as 169° 53' 7". The final rule corrects the seconds so that the W. long. coordinate is now 169° 53' 37".

This final rule also clarifies that the datum used to define the boundary coordinates in § 665.818(b) is the World Geodetic System 1984 (WGS84).

### **Classification**

The Regional Administrator, Pacific Islands Region, NMFS, has determined that this final rule is necessary for the conservation and management of the pelagic fisheries of American Samoa, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule and does not repeat it here. NMFS received no comments on this certification; as a result, a regulatory flexibility analysis is not required, and none has been prepared.

Because this rule relieves a restriction by increasing the geographical area where fishing is allowed, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). Since 2002, NMFS has prohibited pelagic longline fishing by large U.S. vessels in the LVPA, which extended seaward approximately 30-50 nm around the various islands of American Samoa. At that time, the Council and NMFS intended the LVPA to prevent gear conflicts and catch competition between large and small fishing vessels. Since 2002, however, the conditions that led to the establishment of the LVPA in 2002 no longer support the full extent (30-50 nm) of the original prohibited area for longlining. The LVPA may be unnecessarily reducing the efficiency of the larger vessels

by displacing them from a part of their historical fishing grounds. This action will allow large vessels to fish within the LVPA to as close as 12 nm around the islands. The action adds about 16,817 nm<sup>2</sup> of Federal waters that are accessible to these vessels. By allowing access to some of the previously restricted area, the action will improve the efficiency and economic viability of the American Samoa longline fleet.

This final 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, Fisheries, Fishing, Guam, Hawaiian natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: January 28, 2016

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory  
Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 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. Revise § 665.818 to read as follows:

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

(a) *Exemption for historical participation.* (1) An exemption will be issued to a person who currently owns a large vessel to use that vessel to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited areas, if the person seeking the exemption had been the owner of that vessel when it was registered for use with a Western Pacific general longline permit, and has made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997.

(2) A landing of western Pacific pelagic MUS for the purpose of this paragraph must have been properly recorded on a NMFS Western Pacific Federal daily longline form that was submitted to NMFS, as required in § 665.14.

(3) An exemption is valid only for a vessel that was registered for use with a Western Pacific general longline

permit and landed western Pacific pelagic MUS 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 Western Pacific general longline permit on or prior to November 13, 1997.

(4) 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.

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

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

(b) *Exemption for vessel size.* Except as otherwise prohibited in subpart I of this part, a vessel of any size that is registered for use with a valid American Samoa longline limited access permit is authorized to fish for western Pacific pelagic MUS within the American Samoa large vessel prohibited areas as defined in § 665.806(b), except

that no large vessel as defined in § 665.12 may be used to fish for western Pacific pelagic MUS in the portions of the American Samoa large vessel prohibited areas, as follows:

(1) EEZ waters around Tutuila Island enclosed by straight lines connecting the following coordinates (the datum for these coordinates is World Geodetic System 1984 (WGS84)):

<b>Point</b>	<b>S. lat.</b>	<b>W. long.</b>
TU-1	14° 01' 42"	171° 02' 36"
TU-2	14° 01' 42"	170° 20' 22"
TU-3	14° 34' 31"	170° 20' 22"
TU-4	14° 34' 31"	171° 03' 10"
TU-5	14° 02' 47"	171° 03' 10"
TU-1	14° 01' 42"	171° 02' 36"

(2) EEZ waters around the Manua Islands enclosed by straight lines connecting the following coordinates (WGS84):

<b>Point</b>	<b>S. lat.</b>	<b>W. long.</b>
MA-1	13° 57' 16"	169° 53' 37"
MA-2	13° 57' 16"	169° 12' 45"
MA-3	14° 28' 28"	169° 12' 45"
MA-4	14° 28' 28"	169° 53' 37"
MA-1	13° 57' 16"	169° 53' 37"

(3) EEZ waters around Swains Island enclosed by straight lines connecting the following coordinates (WGS84):

<b>Point</b>	<b>S. lat.</b>	<b>W. long.</b>
SW-1	10° 50' 42"	171° 17' 42"
SW-2	10° 50' 42"	170° 51' 39"
SW-3	11° 16' 08"	170° 51' 39"

SW-4	11° 16' 08"	171° 17' 42"
SW-1	10° 50' 42"	171° 17' 42"

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