



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 201102-0284]**

**RIN 0648-BH61**

**Pacific Island Fisheries; Swordfish Trip Limits in the American Samoa Pelagic Longline Fishery**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule removes the swordfish retention limit in the American Samoa deep-set longline fishery. The intent of this rule is to eliminate wasteful regulatory discards of marketable seafood, increasing efficiency and benefits to the local community and the Nation.

**DATES:** The final rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Copies of an environmental analyses and other supporting documents for this action are available at <https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0123>.

**FOR FURTHER INFORMATION CONTACT:** Sarah Ellgen, NMFS PIR Sustainable Fisheries, 808-725-5173.

**SUPPLEMENTARY INFORMATION:** The Council and NMFS manage the American Samoa deep-set longline fishery under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) and implementing regulations, as authorized by the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act). The fishery targets South Pacific albacore, and occasionally catches other pelagic fish, including swordfish. In 2011, NMFS implemented FEP Amendment 5, which included gear and operational requirements intended to reduce interactions with green sea turtles (76 FR 52888, August 24, 2011). That rule included a limit of 10 swordfish per trip for vessels over 40 ft (12.2 m). The limit was intended to discourage switching from deep-set gear targeting albacore to shallow-set gear targeting swordfish because shallow-set fishing may interact more frequently with green sea turtles than deep-set fishing due to the depth of the hooks.

In the years since implementation of that rule, the number of swordfish caught per trip has been small, and there has been no evidence that longline fishermen have targeted swordfish, nor has there been any recent interest in shallow-set fishing in the S. Pacific. From 2008 through 2018, the average number of swordfish caught was 1.3 fish per trip.

The requirement for vessels over 40 ft (12.2 m) to discard swordfish in excess of the 10-fish limit results in wasteful discards, lost revenues, and an unnecessary reduction in seafood. Removing the swordfish limit allows fishermen to retain a few more swordfish that might be caught incidentally during deep-set fishing and are otherwise wastefully discarded. This rule maintains existing gear and operational safeguards to reduce interactions with green sea turtles. The stock of Southwest

Pacific swordfish is neither overfished nor subject to overfishing. All other management measures (including a limited entry program, prohibited fishing areas, fishery observers, logbook reporting, vessel monitoring system, and gear and operational requirements) will remain in place and continue to apply in the fishery.

### **Comments and Responses**

On June 29, 2020, NMFS published a proposed rule and request for public comments (85 FR 38837). The comment period ended July 14, 2020. NMFS received seven comments from a total of three submitters and responds below.

*Comment 1:* The primary goal of this action is to eliminate wasteful regulatory discards of swordfish and increase efficiency.

*Response:* We have clarified that goal in the environmental assessment and the preamble to this final rule.

*Comment 2:* The limited amount of discarded swordfish does not constitute a reduction in seafood available to the Nation, so the limit should be retained.

*Response:* Although the amount of swordfish discarded is small, the fish have already been caught. Requiring their discard is unnecessarily wasteful. This rule considers the importance of supplying fresh fish to the American Samoa community by allowing retention of those few fish that would otherwise have been discarded.

*Comment 3:* Interactions between the fishery and green sea turtles are still a problem, so NMFS should retain the

swordfish limit because it is part of a suite of requirements designed to discourage shallow-set fishing, which could have a relatively greater impact on green sea turtles.

*Response:* The suite of gear and operational requirements are the primary measures to reduce green sea turtle interactions. They do this by ensuring that hooks are set deeper than 100 m, below the depth inhabited by the turtles. Those measures remain unchanged and continue to afford the intended protections to green sea turtles.

The swordfish retention limit was an additional safeguard modeled on the N. Pacific deep-set fishery. The limit was intended to dissuade fishermen from switching from typical deep-set gear used to target albacore to shallow-set fishing targeting swordfish, with its potential for a relatively higher rate of green sea turtle interactions. There is no evidence, however, that fishermen have switched to, or are interested in, shallow-set fishing for swordfish in the S. Pacific.

By removing the limit, NMFS is eliminating the negative impacts of wasteful discards, while retaining the requirements that benefit green sea turtles. The Council and NMFS will continue to monitor the fisheries, and if there are indications of interest in shallow-set fishing, the Council and NMFS could consider different or additional management measures, including the establishment of a well-managed shallow-set longline fishery in the S. Pacific.

*Comment 4:* Eliminating the swordfish retention limit for fishing south of the Equator might incentivize other U.S. longline fisheries to shift their fishing location. If NMFS removes the retention limit, the rule should apply only to vessels with an American Samoa longline limited access permit. The retention limit should remain in place for vessels holding Western Pacific general longline permits or Hawaii longline limited access permits.

*Response:* American Samoa has a very small market demand for fresh fish, and limited options to export fresh-frozen fish. Accordingly, it is highly unlikely that shallow-set longline fishermen from other areas would consider landing their catch in Pago Pago. Also, restricting the action to a permit type, rather than fishing location, would not directly control where fishermen could land their catch. This is because vessels may have multiple permits, which allows them to land their catch in Hawaii, American Samoa, or the West Coast. Practical constraints, however, such as the travel distance between ports of landing with high fuel costs, and the lack of a swordfish market in American Samoa, result in distinct fisheries that fish and land their catch either in and around American Samoa, or in and around Hawaii and California. The gear and operational requirements for fishing south of the Equator apply to all U.S. longline fishing, regardless of permit type, which continues to protect green sea turtles. The Council and NMFS will continue to monitor the fisheries, and if there are

indications that the normal patterns of fishing and landing locations are changing, the Council and NMFS could consider different or additional management measures.

*Comment 5:* The American Samoa longline fishery has landed catch in California, and the identified action area south of the Equator is a subset of the area in which the fishery operates. This suggests that fishing effort in the eastern Pacific Ocean may have a larger impact on leatherback turtles than thought. Thus, NMFS should not finalize the rule unless it first completes Endangered Species Act (ESA) consultation on the American Samoa fishery.

*Response:* Longline vessels based in American Samoa operate almost exclusively south of the Equator in the western Pacific. From 2008 through 2018, less than one percent of fishing effort occurred north of the Equator, and less than one percent in the eastern Pacific for vessels that either started or ended fishing trips in American Samoa.

NMFS reinitiated Section 7 consultation on the American Samoa longline fishery on April 3, 2019. The reinitiation to consult under the ESA was triggered by new ESA-listings and exceedance of the incidental take statement (ITS) in the 2015 Biological Opinion (BiOp) for green, hawksbill, and olive ridley sea turtles. The 2015 ITS for leatherback turtles, however, was not exceeded.

On May 6, 2020, NMFS completed an updated review of the potential effects of the American Samoa longline

fishery on listed species during the period of consultation under the ESA. In that review, NMFS determined that there was no new information that would lead us to reconsider the core assumptions and conclusions reached in the 2015 BiOp for leatherback turtle, South Pacific loggerhead turtle, Indo-West Pacific scalloped hammerhead shark, humpback whale, sperm whale, and six reef-building corals. As a result, we found that the 2015 BiOp remains valid for these species during the period of reinitiated consultation.

Since the publication of the 2015 BiOp, NMFS has received no information to believe that eliminating the swordfish retention limit will change the conduct of the fishery or that the fishery might cause additional harm to the leatherback status during the period of consultation. We note that from 2015 until the present, the fishery has operated well within the ITS limits in the 2015 BiOp. Additionally, in reaching the no jeopardy decision for leatherbacks in the 2015 BiOp, NMFS explained that recent research indicated a continual and significant decline of the leatherback population. Present data on leatherbacks are consistent with this 2015 core assumption, that is, that some populations are stable or increasing, but the data also indicate that other populations for which information is available are either decreasing or have collapsed. Further, because all other management measures will continue to apply in the fishery, and because we do not expect either a change in the operation of the fishery or the number of interactions authorized under the 2015

ITS, we determined that the 2015 BiOp remains valid during the period of consultation.

*Comment 6:* The 15-day comment period was insufficient.

*Response:* The development of the action occurred in public meetings of the Council's advisory panels, Science and Statistical Committee, and the Council, itself, over several years. The Council provided notice of the rulemaking in local media releases, newsletter articles, and on the Council's website. Nonetheless, a comment period of 15 days is expressly allowed by section 304(b) of the Magnuson-Stevens Act.

*Comment 7.* The proposed rule alters the FEP, so the Council should prepare a plan amendment and NMFS should accept public comment for a 60-day period.

*Response.* This rule implements a regulatory amendment, i.e., a change to existing regulations, and the Council is not required to amend the FEP, consistent with sections 303(c) and 304(b) of the Magnuson-Stevens Act.

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

This final rule contains no changes from the proposed rule.

### **Classification**

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

This final rule is considered an Executive Order 13771 deregulatory action.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 665**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Longline, Pacific Islands, Seafood, Swordfish.

Dated: November 3, 2020.

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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. In § 665.813, revise paragraph (k) introductory  
text and remove paragraph (k)(5) to read as follows:

**§ 665.813 Western Pacific longline fishing restrictions.**

\* \* \* \* \*

(k) *South Pacific longline requirements.* When fishing  
south of the Equator (0° lat.) for western Pacific pelagic  
MUS, owners and operators of vessels longer than 40 ft  
(12.2 m) registered for use with any valid longline permit  
issued pursuant to § 665.801 must use longline gear that is  
configured according to the requirements in paragraphs  
(k)(1) through (4) of this section.

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