

8. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which (1) is independently owned and operated; (2) is not dominant in the field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. *Initial Paperwork Reduction Act of 1995 Analysis.* This document seeks comments on the Commission's policies regarding public access to data contained in FCC Forms 395-A and 395-B. The policy changes proposed relate exclusively to the issue of whether the Commission should make the data in these forms available for public inspection. Any changes made as a result of the comments received in response to this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we certify that the proposals in this Notice, if adopted, will not have a significant economic impact on a substantial number of small entities.

10. **Authority.** This *4NPRM* is issued pursuant to authority contained in Sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403 and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403 and 554.

Ordering Clauses

11. Pursuant to the authority contained in Sections 1, 4(i), 4(k), 303(r), 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 303(r), 334, 403, and 554, this *4NPRM* is adopted and part 73 and part 76 of the Commission's Rules are amended as set forth.

12. Comments are due July 14, 2004; Reply comments are due July 26, 2004.

13. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *4NPRM* including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility

Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Equal employment opportunity.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 061704A]

RIN 0648-AQ92

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Pelagic Longline Fishery; Amendment 11

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: Amendment 11 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP Amendment 11) would establish a limited access permit program for the domestic pelagic longline fishery based in American Samoa. The amendment is intended to: reduce the potential for fishing gear conflict in waters of the U.S. exclusive economic zone (EEZ) around American Samoa, prevent local depletion of Pacific pelagic management unit species, minimize fish bycatch and waste, sustain community participation in the fishery, minimize adverse economic impacts to local communities, and ensure opportunities for future participation by indigenous fishers in the domestic longline fishery.

DATES: Comments on FMP Amendment 11 must be received on or before August 23, 2004.

ADDRESSES: Written comments on FMP Amendment 11 should be mailed to William L. Robinson, Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, or faxed to 808-973-2941. Written comments will

be accepted if submitted by e-mail to PeIAmd11AQ92@noaa.gov. Comments sent via e-mail, including all attachments, must not exceed a 10 megabyte file size. Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

Copies of FMP Amendment 11, which includes an environmental assessment/regulatory impact review and an analysis of the impacts on small businesses are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813. The document is also available at the following website: <http://wpcouncil.org>.

FOR FURTHER INFORMATION CONTACT: Eric Kingma, Council staff, at 808-522-8220.

SUPPLEMENTARY INFORMATION: FMP Amendment 11, developed by the Western Pacific Fishery Management Council (Council), has been submitted to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* This notice announces that the amendment is available for public review and comment for 60 days. NMFS will consider public comments received during the public comment period described above in determining whether to approve, disapprove, or partially disapprove FMP Amendment 11.

In 1995, local fishermen in American Samoa developed a small-scale domestic longline fishery targeting primarily albacore tuna. The fishery at that time consisted of small, twin-hulled catamarans, or "alias," less than 12.2 m in length. In 1997, the fishermen began to be concerned over the potential influx into the fishery by large longline fishing vessels (vessels greater than 15.2 m in length) from Hawaii and the U.S. mainland West Coast. They saw the potential for excessive concentration of fishing effort in the EEZ around American Samoa leading to gear conflict, reduction in local catch rates of albacore tuna below economically viable levels, and possible "boom and bust" cycles in the fishery that could disrupt the local community's dependence on the small-scale pelagic longline fishery. They were also concerned about the potential loss of opportunity by indigenous American Samoans for future participation in the large-vessel longline fishery. As it turned out, between 1997 and 2002, the American Samoa-based longline fleet increased from approximately 21 vessels, mostly small alias, to 75 vessels of a variety of sizes and fishing

capacities. Of the 75 active longline vessels operating in the EEZ around American Samoa in 2002, 40 vessels were alias (≤ 12.2 m), 5 vessels were 12.2 m to 15.1 m in length, 15 vessels were 15.2 m to 21.2 m in length, and 15 vessels were greater than 21.3 m in length.

In 1998, the Council recommended that the EEZ waters within 50 nm from shore around American Samoa (approximately 130,000 km²) be closed to fishing vessels longer than 15.2 m in length (large vessels) targeting Pacific pelagic management unit species. This closure was intended to help address gear conflict and catch competition issues in the fishery. NMFS approved the Council's recommendation and subsequently promulgated regulations that established a large fishing vessel area closure in waters within approximately 50 nm of the islands of American Samoa. The closed area was established on March 1, 2002 (67 FR 4367, January 30, 2002). Consequently, fishing effort by large longline vessels in the EEZ around American Samoa became concentrated in those areas

seaward of the closed areas. Both the Council and NMFS recognized that the area closure alone would not entirely prevent gear conflict, therefore, the Council began to develop a limited entry permit program for the fishery. As a prelude to development of such a program, on March 21, 2002, the Council established that date as a "new" control date for the fishery. The purpose of the new control date was serve notice to the public that any person who entered the American Samoa longline fishery after March 21, 2002, may not be guaranteed future participation in the fishery, if the Council prepares and NMFS approves a program to limit entry or effort in the fishery. NMFS published an announcement of the new control date in the **Federal Register** on June 3, 2002 (67 FR 38245).

In 2002, the Council developed FMP Amendment 11 to limit pelagic longline fishing effort in the EEZ around American Samoa. The amendment would establish a limited access program intended to: prevent gear conflict by large longline vessels, prevent potential for local depletion of

fishery resources, maintain community participation within the fishery, ensure future opportunities for indigenous American Samoans, and minimize bycatch and waste incidental to fishing operations. NMFS seeks public comment on FMP Amendment 11, which must be received by August 23, 2004, to be considered by NMFS when it decides whether to approve, disapprove, or partially approve the amendment. NMFS will review FMP Amendment 11 to determine whether it complies with the Magnuson-Stevens Act, the National Standards of that Act, and other applicable law. In the near future NMFS intends to publish in the **Federal Register** a proposed rule to implement FMP Amendment 11.

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

Dated: June 17, 2004.

Allen D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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