



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 110819515-3444-02]

RIN 0648-BA98

Western Pacific Fisheries; Fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments

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

ACTION: Final rule.

SUMMARY: In this final rule, NMFS establishes requirements for fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments. The intent of this rule is to implement fishery management measures consistent with Presidential Proclamations 8335, 8336, and 8337, which established the monuments.

DATES: This final rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER], except for the amendments to §§ 665.13, 665.14, and 665.16, and new §§ 665.903(b) and (c), 665.904(b), 665.905, 665.933(b) and (c), 665.934(b), 665.935, 665.963(b) and (c), 665.964(b), and 665.965. Those sections contain collection-of-information

requirements that the Office of Management and Budget (OMB) has not yet approved under the Paperwork Reduction Act (PRA). When NMFS receives OMB approval, we will publish the control number and the effective date in the Federal Register.

ADDRESSES: The background and details of the monuments fishing provisions are described in Amendment 3 to the Fishery Ecosystem Plan for the Mariana Archipelago, Amendment 2 to the Fishery Ecosystem Plan for the Pacific Remote Island Areas, Amendment 3 to the Fishery Ecosystem Plan for American Samoa, and Amendment 6 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific. You may obtain the amendment from www.regulations.gov or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or from www.wpcouncil.org.

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to Michael D. Tosatto (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiiau, NMFS PIR Sustainable Fisheries, tel 808-944-2108.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage Pacific Island fisheries through fishery ecosystem plans (FEP) for American Samoa, the Mariana Archipelago (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), the Pacific Remote Island Areas (PRIA), Hawaii, and western Pacific pelagic fisheries. Fishing regulations for the Pacific Islands are found mostly in Title 50 of the Code of Federal Regulations, Part 665.

On January 6, 2009, President Bush issued Presidential Proclamations that established three marine national monuments in the Pacific Islands under the authority of the Antiquities Act. Proclamation 8335 established the Marianas Trench Monument, Proclamation 8336 established the Pacific Remote Islands Monument, and Proclamation 8337 established the Rose Atoll Monument. The Proclamations define the monuments' boundaries, prohibit commercial fishing, and describe the management of monument resources. The Proclamations direct the Secretary of Commerce, in consultation with the Secretary of the Interior, to take action under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to regulate fisheries and ensure proper care and management of the monuments, including allowing for traditional indigenous fishing practices.

The Council recommended incorporating the Proclamations' fishery management provisions into its FEPs, and recommended that NMFS establish certain provisions relating to traditional indigenous fishing practices. This final rule implements the Council's recommendations. Consistent with the Proclamations, and based on recommendations from the Council, this final rule creates three new subparts in 50 CFR Part 665, one for each of the three monuments. The rule implements new requirements as follows:

- Codify the boundaries of the monuments and their various management units.
- Prohibit commercial fishing in the Pacific Remote Islands and Rose Atoll Monuments, and in the Islands Unit of the Marianas Trench Monument.
- Establish management measures for non-commercial and recreational fishing in the monuments to include the following:
 - Require Federal permits and reporting for non-commercial and recreational charter fishing to aid in the monitoring of fishing activities.
 - Allow customary exchange in non-commercial fisheries in the Marianas Trench and Rose Atoll Monuments to

help preserve traditional, indigenous, and cultural fishing practices, on a sustainable basis.

- o Define customary exchange as the non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons, and which may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, food, or fuel, that may be necessary to participate in fisheries in the western Pacific.
- o Limit permit eligibility for non-commercial fishing to community residents, as identified in the fishery ecosystem plans -- specifically, American Samoa, Guam and the CNMI are fishing communities -- and limit permit eligibility for recreational charters to businesses of local fishing communities for the Rose Atoll Monument and Marianas Trench Monument Islands Unit.
- o Prohibit all fishing within 12 nm of islands in the Pacific Remote Islands Monument, subject to U.S. Fish & Wildlife Service authority to allow non-commercial

fishing in consultation with NMFS and the Council. For the purposes of this final rule, consultation means that the U.S. Fish & Wildlife Service will consult with NMFS, which in turn will consult with the Council.

- o Prohibit all fishing within 12 nm around Rose Atoll. The Council and NMFS would review this regulation after three years.
- Prohibit the conduct of commercial fishing outside a monument and non-commercial fishing within the monument during the same trip.

To incorporate the new permits that this final rule establishes, NMFS is making administrative housekeeping changes to the Federal permit and reporting requirements at §§ 665.13 and 665.14, and the vessel identification requirements at § 665.16.

NMFS is also making administrative housekeeping changes to the requirements for low-use marine protected areas in the Pacific Remote Islands. NMFS had previously allowed limited fishing at Johnston Atoll, Palmyra Atoll, and Wake Island. Because this final rule prohibits fishing within 12 nm of those islands, it supersedes the provisions allowing fishing in the low-use marine protected areas. To eliminate the potential

conflicting requirements, NMFS is removing the provisions allowing limited take in the monuments. Specifically, NMFS is removing the definition of the low-use area at § 665.599, applicable permit provisions at § 665.624, and the related prohibition at § 665.625.

Additional background information on this final rule is found in the preamble to the proposed rule published on February 21, 2013 (78 FR 12015), and is not repeated here.

Comments and Responses

On February 21, 2013, NMFS published a proposed rule and request for public comments (78 FR 12015); the comment period ended April 8, 2013. NMFS received multiple comments from 13 sources, including individuals, non-governmental organizations and the U.S. Department of the Interior, and responds as follows:

Comment 1: Customary exchange fishing for cultural and ceremonial needs continues to be an important motive for initiating fishing trips and for sharing catches widely among the indigenous people of the Marianas and American Samoa.

Response: NMFS agrees that providing fish for family and friends is a common motivation for initiating fishing trips in the U.S. Pacific Islands, including areas encompassed by the Monuments.

Comment 2: Without access to some cost recovery, it is doubtful that indigenous fishermen will be able to fish in the Monuments at all.

Response: We agree. NMFS and the Council recognize that fishing trips into the Monuments can involve traveling great distances and incurring high expenses. Allowing cost recovery of actual trip expenses through monetary reimbursements or other means enables the continuation of traditional access to the Monuments, perpetuates the practice of customary exchange, and is consistent with the traditional indigenous fishing provisions of the Presidential Proclamations.

Comment 3: The proposed definition of customary exchange equates to commercial fishing.

Response: The definition of customary exchange in this rule does not equate to commercial fishing within the meaning of the Proclamations. Proclamations 8335 establishing the Mariana Trench Monument and Proclamation 8337 establishing the Rose Atoll Monument require the Secretaries to prohibit commercial fishing while allowing sustainable non-commercial fishing, including traditional indigenous fishing practices. Neither the Antiquities Act, on which the Proclamations are based, nor the Proclamations themselves define commercial or non-commercial fishing. Instead, the ban on commercial fishing in the

Proclamations must be read in context with the remainder of the Proclamations establishing the Monuments. The Proclamations clearly allow traditional indigenous fishing practices within the Monuments. Further, the Council's amendment establishes based on ample historical and sociological research that customary exchange of fish is an important element of traditional indigenous fishing practices in the region. In light of the foregoing, reading the term "noncommercial" to include "customary exchange" is consistent with the Proclamations' directives and does not conflict with the Proclamations' prohibition on commercial fishing. The rule, moreover, includes several safeguards and monitoring tools to ensure non-commercial fishing is sustainable, such as permit and catch logbook reporting requirements, and limitations on permit eligibility.

Comment 4: The final rule should contain one or more additional mechanisms to ensure enforcement of the ban on commercial fishing and ensure that customary exchange does not cross the line into commercial fishing. Such mechanisms could include (1) limit customary exchange to fishing practices that were part of the cultural, social, or religious tradition of local communities at the time the proclamations were issued, consistent with the Proclamations' allowance for "traditional

indigenous fishing," (2) establish bag limits for noncommercial fishing, (3) cap the amount of money that can be received through customary exchange, or (4) require fishermen to report fishing trip expenses and cash sales.

Response: The Council and NMFS considered these suggested mechanisms when developing the customary exchange provisions. Given the low level of commercial fishing in the past, and the low level of non-commercial fishing anticipated under this final rule, the Council and NMFS concluded that additional requirements are unnecessary at this time and could be counter-productive. There is a lack of scientific data to support the effectiveness of bag limits as a management tool for harvests of small amounts of pelagic species in the Monuments. Logbooks will be required to monitor non-commercial fishing activity in the Monuments, and NMFS and the Council may consider additional requirements or restrictions in the future, if necessary. Additional requirements to report fishing trip expenses and cash sales run counter to cultural values and benefits of sharing fish, and could change fishing motivation and/or practice of customary exchange.

Comment 5: Absent some means of tracking expenses and reimbursements, it will be impossible to determine whether vessel owners or operators participating in customary exchange

are being reimbursed for trip or non-trip expenses beyond those that the regulations contemplate. Therefore, there should be additional requirements on the customary exchange provision to ensure that reimbursements do not exceed actual trip expenses. This could include requirements for vessel owners and operators to report per trip expenses and monetary reimbursements as part of the logbook reporting requirements.

Response: See response to Comment 4.

Comment 6: To ensure that the practice of customary exchange does not lead eventually to commercial fishing, and to aid enforcement in determining when cash reimbursements exceed actual trip expenses, the final rule should require recordation of monetary reimbursements and trip expenses.

Response: See response to Comment 4.

Comment 7: The final rule should include a definition of Community Residents to include individuals either born in the relevant localities, or who have resided there for a period not less than one year, to bolster the regulations' goal of allowing customary exchange to "help preserve traditional indigenous and cultural fishing practices."

Response: Guam, the CNMI, and American Samoa are all identified as fishing communities in the FEPs (64 FR 19067, April 19, 1999) as defined under the Magnuson-Stevens Act. Thus,

all persons that reside in fishing communities are community residents, regardless of how long they have been residents or whether they were born there. Given the low level of non-commercial fishing and customary exchange anticipated under this final rule, the Council and NMFS concluded that additional requirements or restrictions are unnecessary. Moreover, imposing additional time and birth requirements could frustrate the Proclamations' objective of allowing the continuation of community-based indigenous and cultural fishing, as traditionally practiced, including customary exchange.

Comment 8: Trip expenses should be limited only to ice, bait, fuel, and food. Unless circumscribed, actual trip expense might include a number of expenses, such as boat repairs or new equipment, which exceed the definition of customary exchange.

Response: NMFS clarifies here that for the purpose of customary exchange, actual trip expenses means only those expenses a non-commercial permit holder incurs specifically to make a non-commercial fishing trip. Actual trip expenses generally include ice, bait, fuel, food, but can also include other trip expenses such as equipment or repairs specific to a fishing trip to a monument. Because NMFS and the Council cannot foresee every actual trip expense, a specific list is not appropriate. NMFS does not consider actual trip expenses to

include expenses that a permit holder would incur without making a fishing trip to the Monument, including expenses relating to dock space, vessel mortgage payments, routine vessel maintenance, vessel registration fees, safety equipment required by U.S. Coast Guard, and other incidental costs and expenses normally associated with ownership of a vessel.

Comment 9: NMFS should prohibit community residents and their families and friends who obtain fish through customary exchange from selling, exchanging, bartering, or transferring those fish to persons outside the community. Prohibiting secondary transfers would help safeguard against unlawful commercial fishing, and ensure that the benefits of customary exchange are enjoyed only within the local community.

Response: NMFS disagrees that it is necessary to prohibit secondary sales and exchanges of fish obtained through customary exchange. The ample record considered by the Council does not include any evidence that secondary sales or exchanges of fish under customary exchange are either likely to occur, or would increase the likelihood of prohibited commercial fishing in the Monuments. Moreover, the comment letters provide no information beyond speculation that secondary sales and exchanges of fish would increase the risk of unauthorized commercial fishing. The Council's FEP amendments describe how customary exchange is an

important element of traditional indigenous fishing practices in the region. As described in the amendments, customary exchange may include friends and family of community residents that live outside the community, but return regularly to participate in cultural and family events. The Council determined, and NMFS agrees, that prohibiting family and friends of community residents from sharing fishery resources harvested from the Rose Atoll Monument and the Marianas Trench Monument Islands Unit would be contrary to the community practices that are being preserved, and would be inconsistent with Chamorro, Carolinian, and American Samoan culture and tradition. In addition, based on the expected low level of participation in customary exchange, as fully documented in the Council record, as well as several safeguards and monitoring tools to ensure that non-commercial fishing is sustainable, NMFS does not believe that restrictions on secondary transfers are necessary at this time.

Comment 10: The definition of customary exchange should explicitly state that no monetary exchange may occur at any level in association with any fish caught in either the Islands Unit of the Mariana Trench Monument or the Rose Atoll Monument. This will prevent community residents who obtain fish through customary exchange from potentially receiving substantial monetary gain, beyond the costs associated with the trip.

Response: We disagree. As documented in the FEP amendments for this action, NMFS and the Council evaluated information from recent and historical fishing trips to the Rose Atoll and Mariana Trench Monuments, and concluded that the costs of a Monument fishing trip may range from several hundred to several thousand dollars. Therefore, allowing fishermen to recover actual trip expenses through monetary reimbursements or other means is necessary to provide for continued traditional access to the Monuments. Limiting reimbursements to actual trip expenses will help provide a necessary safeguard against the conduct of commercial fishing.

Comment 11: Without permit and catch limits, customary exchange could enable an unlimited number of residents and boats to go to Monument waters and fish until there are no more fish, thereby defeating any ideas of conservation or sustainability.

Response: Given the past low levels of fishing occurring in marine waters now designated as the Rose Atoll Monument and Marianas Trench Monument Islands Unit, NMFS notes that the regulations prohibiting commercial fishing, requiring fishing permits and catch reporting, limiting permit eligibility only to community residents and local businesses, and limiting customary exchange to include cost recovery only for actual trip expenses are appropriate constraints at this time to ensure non-

commercial fishing is managed sustainably. Additionally, the permit and catch reporting requirements will provide information that NMFS and the Council need to monitor catch and effort in the Monuments and develop additional requirements, if necessary.

Comment 12: Before the establishment of the Monuments, there was very little indigenous and arguably no cultural fishing occurring in any Monument waters. This is not a deeply rooted cultural tradition in Monument waters. There is nothing to preserve here, since the activity of traditional, indigenous, and cultural fishing have been negligible.

Response: The Council's FEP amendments that support this final rule includes analysis of studies and published papers that document fishing trips to Rose Atoll and the Mariana Trench Monument Islands Unit. Notwithstanding the relatively low number of fishing trips to areas within the Monuments, their cultural importance to fishing communities traditionally dependent on fishery resources is well documented. This final rule will manage and preserve those traditional fishing practices.

Comment 13: In all monument areas, there should be catch limits on all fishing based on biological parameters specified in a comprehensive fisheries ecosystem plan (FEP), and based on a precautionary approach when biological data are limited.

Response: The setting of annual catch limits as specified in the FEP is beyond the scope of this rule. By way of further response, we note that we have specified catch limits applicable to the Rose Atoll and Mariana Trench Monuments. On March 13, 2013, NMFS issued a final rule specifying the 2013 annual catch limits and accountability measures for all federally managed bottomfish, crustacean, precious coral, and coral reef ecosystem resources in American Samoa, Guam, and the CNMI (78 FR 15885). NMFS and the Council specified the limits and accountability measures based on the process described in each western Pacific FEP, and codified at 50 CFR 665.4.

Specifically, the regulations require NMFS to specify, every fishing year, an ACL for each stock and stock complex of management unit species included in an FEP, as recommended by the Council and in consideration of the best available scientific, commercial, and other information about the fishery. Catches of bottomfish, crustacean, precious coral, and coral reef ecosystem resources from the Rose Atoll and Mariana Trench Monuments will be counted towards the specified catch limits.

With respect to the Pacific Remote Islands Monument, NMFS did not specify catch limits for bottomfish, crustacean, precious coral, or coral reef ecosystem resources because there is no suitable habitat for these fisheries beyond the 12 nm no-

fishing zone, except at Kingman Reef, where fishing for these resources does not occur.

Within all Monument areas, the level of non-commercial fishing is expected to be quite low. NMFS will continue to analyze all sources of fishing mortality in the Monuments, and will consider establishing Monument-specific ACL's if they become necessary. Specifically, fishing permit and catch reporting requirements, and the provision for consultation with the USFWS will provide information that NMFS and the Council need to monitor catch and effort in the monuments, and develop additional fishing requirements, including Monument-specific catch limits for species that may require them.

Comment 14: Before any fishing occurs at all, a scientific baseline study should be done to determine what the waters could support without human intervention.

Response: A baseline study without fishing is impossible to conduct because fishing in waters now encompassed by the Monument has long been conducted and continues to occur, although at low levels. Nonetheless, NMFS, in collaboration with the Council and other federal and local agencies have conducted biological and social assessments within waters now encompassed by the Monument. NMFS and the Council considered this information in developing and assessing the environmental

impacts of the fishing regulations and found that the level of non-commercial fishing anticipated under the regulations is sustainable.

Comment 15: Only non-commercial fishing using natural materials should be allowed in the Mariana Trench Marine National Monument Waters.

Response: In developing monument regulations for traditional indigenous fishing, NMFS and the Council found that traditional indigenous fishing gear and practices necessarily evolve to provide for greater comfort, safety, and efficiency. We consider the use of modern gear integral to both maintaining traditional indigenous fishing in the Monuments, and preserving the safety of human life at sea consistent with National Standard 10.

Comment 16: There should be a prohibition on subsistence fishing in the island units of the Mariana Trench Marine National Monument, except in support of Native Chamorro/Carolinian cultural, religious, and subsistence practices consistent with the long-term conservation and protection of the region.

Response: The benefits derived from non-commercial fishing should apply to all fishing communities that have been historically dependent on fishery resources in the Monument. In

developing the definition of non-commercial fishing, NMFS and the Council considered the concept of subsistence fishing, which in Guam and CNMI includes the non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for cultural, social or religious purposes, and supports the long-term sustainability of monument fishery resources.

Comment 17: The Northern Islands should be a sanctuary for the indigenous people of the CNMI (people of Northern Mariana Descent). The monument area should be jointly managed so that our indigenous fishing rights are protected and that any person of Northern Mariana's Decent should be allowed to fish in the Monument area.

Response: To ensure that non-commercial fishing is conducted on a sustainable basis consistent with the Proclamation, this final rule requires NMFS to issue non-commercial fishing permits only to a community resident of Guam or the CNMI, or a fishing charter business established legally under the laws of Guam or the CNMI. This includes people indigenous to the Mariana Islands residing in CNMI and Guam. Additionally, NMFS and the Council will continue to consult the Mariana Monument Advisory Council and the CNMI government on Monument management issues, including indigenous fishing rights.

Comment 18: NMFS should require all fish to be eaten within monument boundaries in all the marine national monuments.

Response: Such a restriction would not allow for the traditional indigenous fishing practice of customary exchange, and is not necessary for the sustainable management of non-commercial fishing in the Monuments.

Comment 19: Codify in regulation, the coordinates of the 12 nautical mile no-take zone around the Pacific Remote Islands and Rose Atoll Monuments. This will enable marine vessels to comply with the prohibition on fishing.

Response: Codifying the prohibition on fishing within 12 nm provides sufficient information for compliance and enforcement. If it becomes clear that the administration or enforcement of the restricted areas would benefit from codifying the boundary coordinates, the Council or NMFS could propose that in a future rulemaking.

Comment 20: After the regulations are finalized, chart the relevant boundaries of the Pacific Monuments on NOAA nautical charts.

Response: NMFS will contact NOAA's Office of Coast Survey for consideration of plotting relevant boundaries of the Pacific Monuments on future charts.

Comment 21: The regulations at § 665.599 should clarify that the no-take zone in the PRI monument extends 12 nm seaward of the low water mark, and not landward of the 50-fm curve.

Response: This final rule prohibits non-commercial fishing within 12 nm of emergent land within the PRIA Monument. See 50 CFR 665.933(e). The 12 nm no-take areas fully enclose the pre-existing 50-fm no-take areas that are codified at § 665.599. This final rule does not alter those areas, but NMFS will remove the redundant 50-fm no-take areas in a future housekeeping change.

Comment 22: Maug Island lagoon should have special protections to exclude all fishing.

Response: NMFS and the Council did not consider a fishing prohibition for Federal waters at Maug Island because there is no information indicating that the low level of fishing that occurs there poses a threat to any marine resource.

Comment 23: Non-commercial fishing should be allowed within 12 nm of Rose Atoll. Traditional fishing at Rose Atoll mostly occurs on the coral reefs, which are within three miles from shore. Prohibiting all types of fishing within 12 nm around Rose, basically prohibits going to Rose for traditional fishing.

Response: Federal regulations at § 665.99, which became effective on March 25, 2004 (69 FR 8336, February 24, 2004)

already prohibit fishing landward of the 50-fm isobath around Rose Atoll to help protect coral reef ecosystem resources. The regulations extending the fishing prohibition to 12 nm around Rose Atoll is intended to help protect local bottomfish, coral reef ecosystem, and pelagic resources. However, the regulations maintain traditional access and fishing opportunities outside of 12 nm for culturally significant pelagic resources, including skipjack tuna. As describe in the proposed rule (78 FR 12015, February 21, 2013), the Council will review this closed area after a three-year period; the review will include a review of the closure's impacts on residents of American Samoa, including the Manua Islands.

Comment 24: The proposed 12 nautical miles prohibited fishing zone around Rose Atoll does not allow the indigenous people of American Samoa to fish within the zone. The people of the Manua Islands request that the Council revisit the proposed 12 nm prohibited fishing zone around Muliava (Rose) Atoll and take into account the conservation need for the closure as well as the effect this has on our cultural and religious rights as indigenous Samoans.

Response: See response to comment 23.

Comment 25: The indigenous people of Aunuu Island voiced a strong objection to the inclusion of Aunuu fishing grounds to the extension of the American Samoa National Marine Sanctuary.

Response: Changes to the Sanctuary boundaries are outside the scope of this final rule. NMFS will forward the comment to NOAA's Office of National Marine Sanctuaries.

Comment 26: The residency requirement for permit eligibility appears to prevent recreational fishing from charters and private vessels, including by individuals on scientific research vessels, who visit the Monuments from other locations.

Response: The Council and NMFS believe that restricting non-commercial fishing opportunities to residents of fishing communities that are traditionally dependent upon marine resources in the Monuments was necessary to ensure sustainability, and is consistent with the intent of the Proclamations. Individuals who are not residents of American Samoa, Guam, or the CNMI are not eligible for applicable non-commercial fishing permits. However, they may fish recreationally as a guest aboard a permitted non-commercial vessel or recreational charter vessel. A person aboard a scientific research vessel may fish recreationally only in the Rose Atoll and the Mariana Trench Monuments Islands Unit, if the

owner and operator of the vessel possess a non-commercial permit, or recreational charter permit.

Comment 27: Delete reference to all requirements that the USFWS consult with the Council on activities within 12 nm of the Pacific Remote Islands Monument on the basis that it is inconsistent with Proclamation 8336, which only requires the Secretary of the Interior to consult with the Secretary of Commerce.

Response: Requiring consultation with the Council is consistent with 16 U.S.C. 1851(a)(15), 50 CFR 600.310(i), and the FEP for the Pacific Remote Island Areas, under which the Council must account for all sources of fishing mortality within 12 nm of land in future determinations of catch limits. Consultation on USFWS permits will help inform those decisions. However, NMFS is clarifying in the final rule that consistent with the Proclamations, consultation means that the U.S. Fish and Wildlife Service will consult with NMFS, which in turn will consult with the Council.

Comment 28: The USFWS should only consult with NMFS, not the Council, regarding potential non-commercial fishing within 12 nm no-take zone of the PRI Monument because requiring such consultation would needlessly delay the decision-making process to the detriment of those seeking a permit.

Response: See response to comment 27.

Comment 29: The regulations prohibiting all fishing unless authorized by the USFWS have no basis in law because Presidential Proclamation 8336 did not establish a national wildlife refuge around Wake Island, and cannot expand refuge boundaries from 3 to 12 miles around Howland, Baker, Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll.

Response: The no-take areas are established under the authority of the Magnuson-Stevens Act, and are a necessary and appropriate measure to protect coral reef ecosystems, local bottomfish stocks, and local pelagic stocks. Because Presidential Proclamation 8336 expressly provides the Department of the Interior with responsibility for management of the Pacific Remote Island Monument, including out to 12 nm around Wake Island, Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Kingman Reef, and Palmyra Atoll, and because the Secretary of the Interior delegated this authority to the USFWS, these no-take areas are subject to USFWS authority to permit non-commercial fishing, in consultation with NMFS and the Council as described in this final rule, pursuant to existing legal authorities.

The commenter's objection to the USFWS exercise of jurisdiction within national wildlife refuge boundaries extended by Secretary

of the Interior is outside the scope of this rulemaking. NMFS will forward the comment to the USFWS.

Comment 30: Records should be kept of all fish caught.

Response: This final rule requires the operator of permitted vessels to keep an accurate and complete record of catch and effort on logbooks provided by NMFS, and to submit the logs to NMFS for each day of fishing within 30 days of the end of each fishing trip. The permit and reporting requirements will allow the Council and NMFS to actively monitor and manage non-commercial fishing in the Monuments.

Comment 31: We strongly endorse the need for permit and corresponding reporting of catch.

Response: See response to Comment 30.

Comment 32: All fishing vessels shift between commercial and non-commercial fishing, so they should be required to have a vessel monitoring system (VMS) unit on board to assist in monitoring fishing activities and vessel locations. Commercial fishing vessels, in addition to a vessel monitoring system (VMS), should have an observer.

Response: Given the historical low level of fishing in the Monuments, the Council did not recommend a requirement for vessels to carry VMS units or observers.

Comment 33: When will promises made by a White House envoy to the people of the Mariana Islands in order to gain their support for the Mariana Trench Monument, as documented on Governor Benigno R. Fitial's remarks to the Mariana Trench Monument Advisory Council on June 5, 2012, be fulfilled? The promises included the following:

- No future efforts to incorporate waters of the Volcanic and Trench Units into conservation zones or additional bureaucratic layers of protection, such as Wilderness Area designations.
- Full traditional indigenous access and practices in the Island Unit be allowed subject to approval and regulation by a group of local officials and/or citizens.
- Conveyance to the CNMI, without restriction, 0-3 miles of nearshore submerged lands for all islands.
- Undertake an assessment of the opportunities for education, research, and other economic activity associated with the new monument.
- DOI to develop legislation, including provision for revenue-sharing, authorizing mineral exploration and extraction, and setting up the regulatory process for such activities.

Response: This final rule allows for the continuation of traditional access and indigenous fishing practices in the Islands Unit of the Mariana Trench Monument, as monitored by permits and reporting requirements. The Council, which includes representation from the CNMI Department of Land and Natural Resources and CNMI citizens knowledgeable in conservation and management of fishery resources of the CNMI, recommended the requirements. All other issues are beyond the scope of this final rule.

Comment 34: Charter boats have no place in the monuments and they go against the spirit and intent of the proclamations of the Islands Unit of the Mariana Trench Monument and the Rose Atoll Marine National Monument. By definition, charter boat fishing is commercial and there is nothing customary or traditional about it.

Response: The Magnuson-Stevens Act defines charter fishing to mean fishing from a vessel carrying a passenger for hire who is engaged in recreational fishing, and the Proclamations require that recreational fishing be managed as a sustainable activity. The final rule provides a procedure for permitting and monitoring charter boat fishing to ensure it is sustainable.

Comment 35: We strongly support codification of the commercial fishing prohibition as set forth in the Proclamations establishing the three marine national monuments.

Response: NMFS acknowledges the comment.

Comment 36: We support the proposed prohibition on using fish harvested through recreational fishing as a medium of customary exchange.

Response: Recreational fishing is motivated by sport or pleasure. The sale or customary exchange of recreational charter catches would be inconsistent with the Proclamations' conservation objectives.

Comment 37: The proposed regulatory text in § 665.905(a) should be revised to clarify that permits issued under this section are "fishing" permits.

Response: Further clarification is unnecessary because § 665.905 is already titled "Fishing permit procedures and criteria."

Comment 38: Proposed § 665.905(a)(3)(i) should be revised to include only family and friends of residents of the American Samoa, CNMI, and Guam fishing communities.

Response: Customary exchange is important for community members to participate in and contributes to the maintenance of the social fabric and cultural continuity of Pacific Island

communities. While customary exchange most often occurs between a fisherman and community residents who are also family members or friends, NMFS and the Council did not find a conservation or management need to limit customary exchange to them.

Comment 39: The proposed regulations at § 665.933(b) should be revised to refer to the authorizations at both §§ 665.934(d) and 665.935.

Response: Adding a reference to § 665.934(d) within § 665.933(b) is unnecessary because the provisions of § 665.934(d) are captured in § 665.933(d).

Comment 40: NMFS should acknowledge that the Proclamations direct the Secretary of Commerce to consult with the Secretary of the Interior when regulating fisheries, and should clarify that the provision for traditional indigenous fishing practices applies only in the Rose Atoll and Mariana Trench Monuments.

Response: NMFS acknowledges the Proclamations' direction and provisions.

Comment 41: NMFS and the Council should consult with the USFWS when reviewing the prohibition on fishing within 12 nm of Rose Atoll after three years.

Response: The USFWS is a member of the Council and will be a part of any review and related recommendations relating to Monument fishery management measures.

Comment 42: NMFS should acknowledge that it currently allows limited fishing in the low-use marine protected areas of the Pacific Remote Islands at Johnston Atoll, Palmyra Atoll, and Wake Island, except for fishing within a National Wildlife Refuge unless specifically authorized by the USFWS.

Response: Since 2002, consistent with 50 CFR 665.621, fishing for PRIA coral reef management unit species has not been allowed within the boundary of a national wildlife refuge unless specifically authorized by USFWS. This prohibition applied to coral reef ecosystem species only. However, this final rule establishes a no-take fishing zone within 12 nm of the islands in the Pacific Remote Island Monument, and prohibits fishing for all federally managed species within this zone. This prohibition is subject to USFWS authority to allow fishing for any federally managed species, in consultation with NMFS and the Council as described in this final rule pursuant to existing legal authorities.

Comment 43: NMFS should acknowledge USFWS authority to permit non-commercial fishing within 12 nm of the islands in the Pacific Remote Islands Monument.

Response: As stated in the final rule, USFWS has authority to permit non-commercial fishing within 12 nm of the islands in the Pacific Remote Islands Monument, in consultation with NMFS

and the Council as described in this final rule, pursuant to existing legal authorities.

Comment 44: NMFS should clarify that the residency requirements for non-commercial fishing permits apply only in the Islands Unit of the Mariana Trench Monument, and not in the Volcano or Trench Units.

Response: NMFS clarifies that permits are not required for fishing in Volcano or Trench Units of the Marianas Trench Monument.

Changes to the Proposed Rule

In this final rule, NMFS is making five technical clarifications. First, in the proposed rule, the definition of "customary exchange" at § 665.12 inadvertently omitted a portion of the requirements at §§ 665.905(a)(3)(i) and 665.965(a)(3)(i). In those sections, the provisions for customary exchange specifically include family and friends of community residents. This final rule revises the definition to correct the inadvertent omission.

Second, because this final rule revises the definition of customary exchange to include family and friends of community residents, consistent with the Council's recommendation, repeating the provision in the permit terms and conditions at §§ 665.905(a)(3)(i) and 665.965(a)(3)(i) is redundant and, thus,

unnecessary. This final rule removes the portion of the terms and conditions relating to friends and family of community residents from the permit conditions to eliminate the redundancy.

The third technical clarification relates to monetary reimbursement for customary exchange. The definition of customary exchange reflects the Council's recommendation that such exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, which includes, but is not limited to, ice, bait, fuel, and food, but can also include other trip expenses such as equipment or repairs specific to a fishing trip to a monument. Because NMFS and the Council cannot foresee every actual trip expense, a specific list is not appropriate. However, NMFS does not consider actual trip expenses to include expenses that a permit holder would incur without a fishing trip to the Monument, such as expenses relating to dock space, vessel mortgage payments, routine vessel maintenance, vessel registration fees, safety equipment required by U.S. Coast Guard, and other incidental costs and expenses normally associated with ownership of a vessel. This final rule revises the definition to make that distinction clear.

The fourth technical clarification also relates to monetary reimbursement for customary exchange. In the proposed rule, in the terms and conditions for the Marianas Trench Monument Islands Unit and Rose Atoll non-commercial permits, NMFS inadvertently omitted the words "including but not limited to." This error meant that monetary reimbursement under customary exchange would have been limited to ice, bait, fuel, or food, and the incorrectly-worded terms and conditions would have been inconsistent with the Council's definition. This final rule revises §§ 665.905(a)(3)(ii) and 665.965(a)(3)(ii) to correct the inadvertency. Also, see the response to Comment 8, above.

The fifth technical clarification relates to USFWS authorization of non-commercial fishing within 12 nm of the islands in the Pacific Remote Islands Monument. The proposed rule provided that USFWS would consult with NMFS and the Council when authorizing non-commercial fishing, but did not identify a process for such consultations. The purpose of consultation on USFWS permits is to enable NMFS and the Council to account for and monitor all sources of fishing mortality in the Monuments, consistent with their responsibilities under the Magnuson-Stevens Act. In this final rule, NMFS clarifies that the USFWS is not required to consult directly with the Council on its non-commercial fishing permits. Consistent with the Proclamation,

the USFWS will consult with NMFS, and NMFS will in turn consult with the Council. This final rule revises § 665.934(d) to make that clarification.

Classification

The Regional Administrator, Pacific Islands Region, NMFS, has determined that the FEP amendments are necessary for the conservation and management of the fisheries in the monuments, and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

Executive Order 12866

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

Certification under the Regulatory Flexibility Act

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council 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 it is not repeated here. NMFS received no comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the PRA. These requirements have not yet been approved by OMB, but such approval is expected in the near future. NMFS will publish a notice when these requirements are cleared by OMB and are, therefore, effective (see DATES).

For both types of non-commercial fishing (non-commercial and recreational charter) combined, NMFS expects to receive up to 10 permit applications each year for Rose Atoll and the Marianas Trench Islands Unit, each, and up to 15 permit applications a year for the Pacific Remote Islands Monument, for a total of 35 applications in a year. NMFS estimates that an application would take 15 minutes to complete, for a total maximum burden of 8.75 hours. If each fishing trip is three days, there could be 105 logbooks (35 trips x 3 days) in a year. At 20 minutes per log sheet, the maximum reporting burden would be 35 hours per year. Therefore, NMFS expects the total maximum annual burden for permit applications and reporting to be 43.75 hr. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to

penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Commercial fishing, Commonwealth of the Northern Mariana Islands, Fisheries, Guam, Marianas Trench, Monuments and memorials, Pacific Remote Islands, Rose Atoll.

Dated: May 28, 2013.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR chapter VI 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 § 665.12, add the definitions of "Customary exchange" and "Recreational fishing," in alphabetical order, and revise the definition of "Non-commercial fishing" to read as follows:

§ 665.12 Definitions.

* * * * *

Customary exchange means the non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons. Customary exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific. Actual trip expenses do not include expenses that a fisherman would incur without making a fishing trip, including expenses relating to dock space, vessel mortgage payments, routine vessel

maintenance, vessel registration fees, safety equipment required by U.S. Coast Guard, and other incidental costs and expenses normally associated with ownership of a vessel.

* * * * *

Non-commercial fishing means fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing.

* * * * *

Recreational fishing means fishing conducted for sport or pleasure, including charter fishing.

* * * * *

3. In § 665.13,

a. Revise paragraphs (a), (c)(1), and (c)(2);

b. Revise paragraph (f)(2) introductory text, and add paragraphs (f)(2)(ix) through (f)(2)(xiii); and

c. Revise paragraph (g), to read as follows:

§ 665.13 Permits and fees.

(a) Applicability. The requirements for permits for specific western Pacific fisheries are set forth in subparts B through I of this part.

* * * * *

(c) * * *

(1) An application for a permit to operate in a Federal western Pacific fishery that requires a permit and is regulated under subparts B through I of this part may be obtained from NMFS PIRO. The completed application must be submitted to PIRO for consideration. In no case shall PIRO accept an application that is not on a Federal western Pacific fisheries permit application form.

(2) A minimum of 15 days after the day PIRO receives a complete application should be allowed for processing the application for fisheries under subparts B through I of this part. If an incomplete or improperly completed application is filed, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of the letter of notification of deficiency, the application will be administratively closed.

* * * * *

(f) * * *

(2) PIRO will charge a non-refundable processing fee for each application (including transfer and renewal) for each permit listed in paragraphs (f)(2)(i) through (f)(2)(xiii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining

the administrative costs incurred in processing the permit. The fee may not exceed such costs. The appropriate fee is specified with each application form and must accompany each application. Failure to pay the fee will preclude the issuance, transfer, or renewal of any of the following permits:

* * * * *

(ix) Marianas Trench Monument non-commercial permit.

(x) Marianas Trench Monument recreational charter permit.

(xi) Pacific Remote Islands Monument recreational charter permit.

(xii) Rose Atoll Monument non-commercial permit.

(xiii) Rose Atoll Monument recreational charter permit.

(g) Expiration. A permit issued under subparts B through I of this part is valid for the period specified on the permit unless revoked, suspended, transferred, or modified under 15 CFR part 904.

* * * * *

4. In § 665.14 revise paragraphs (b) (1) (i) and (b) (2) (iv) to read as follows:

§ 665.14 Reporting and recordkeeping.

* * * * *

(b) * * *

(1) * * *

(i) The operator of a fishing vessel subject to the requirements of §§ 665.124, 665.142, 665.162, 665.203(a)(2), 665.224, 665.242, 665.262, 665.404, 665.424, 665.442, 665.462, 665.603, 665.624, 665.642, 665.662, 665.801, 665.905, 665.935, or 665.965 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as allowed in paragraph (b)(1)(iii) of this section.

* * * * *

(2) * * *

(iv) If fishing was authorized under a permit pursuant to §§ 665.124, 665.224, 665.424, 665.624, 665.905, 665.935, or 665.965, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

* * * * *

5. In § 665.16 revise paragraph (a)(3) to read as follows:
§ 665.16 Vessel identification.

(a) * * *

(3) A vessel that is registered for use with a valid permit issued under subparts B through E and subparts G through I of

this part must be marked in accordance with paragraph (b) of this section.

* * * * *

6. Revise § 665.599 to read as follows:

§ 665.599 Area restrictions.

Except as provided in § 665.934, fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters are no-take MPAs: Landward of the 50 fathom curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153.

7. Remove and reserve § 665.624 paragraph (a)(1)(i) to read as follows:

§ 665.624 Permits and fees.

(a) * * *

(1) * * *

(i) [Reserved]

* * * * *

8. Remove and reserve § 665.625 paragraphs (a) and (b)(3) to read as follows:

§ 665.625 Prohibitions.

* * *

(a) [Reserved]

(b) * * *

(3) [Reserved]

* * * * *

9. In 50 CFR part 665, add subparts G, H, and I to read as follows:

Subpart G -- Marianas Trench Marine National Monument
Sec.

665.900 Scope and purpose.
665.901 Boundaries.
665.902 Definitions.
665.903 Prohibitions.
665.904 Regulated activities.
665.905 Fishing permit procedures and criteria.
665.906 International law.

Subpart H -- Pacific Remote Islands Marine National Monument

665.930 Scope and purpose.
665.931 Boundaries.
665.932 Definitions.
665.933 Prohibitions.
665.934 Regulated activities.
665.935 Fishing permit procedures and criteria.
665.936 International law.

Subpart I -- Rose Atoll Marine National Monument

665.960 Scope and purpose.
665.961 Boundaries.
665.962 Definitions.
665.963 Prohibitions.
665.964 Regulated activities.
665.965 Fishing permit procedures and criteria.
665.966 International law.

Subpart G -- Marianas Trench Marine National Monument

§ 665.900 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in

the Monument. Nothing in this subpart shall be deemed to diminish or enlarge the jurisdiction of the Territory of Guam or the Commonwealth of the Northern Mariana Islands.

§ 665.901 Boundaries.

The Marianas Trench Marine National Monument includes the following:

(a) Islands Unit. The Islands Unit includes the waters and submerged lands of the three northernmost Mariana Islands (Farallon de Pajaros (Uracas), Maug, and Asuncion). The shoreward boundary of the Islands Unit is the mean low water line. The seaward boundary of Islands Unit is defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	144° 1' 22.97"	21° 23' 42.40"
2	145° 33' 25.20"	21° 23' 42.40"
3	145° 44' 31.14"	21° 11' 14.60"
4	146° 18' 36.75"	20° 49' 17.46"
5	146° 18' 36.75"	19° 22' 0.00"
6	145° 3' 12.22"	19° 22' 0.00"
7	144° 1' 22.97"	20° 45' 44.11"
1	144° 1' 22.97"	21° 23' 42.40"

(b) Volcanic Unit. The Volcanic Unit includes the submerged lands of designated volcanic sites. The boundaries of the Volcanic Unit are defined as circles of a one nautical mile radius centered on each of the following points:

ID	E. long.	N. lat.
Fukujin	143° 27' 30"	21° 56' 30"
Minami Kasuga #2	143° 38' 30"	21° 36' 36"
N.W. Eifuku	144° 2' 36"	21° 29' 15"
Minami Kasuga #3	143° 38' 0"	21° 24' 0"
Daikoku	144° 11' 39"	21° 19' 27"
Ahyi	145° 1' 45"	20° 26' 15"
Maug	145° 13' 18"	20° 1' 15"
Alice Springs	144° 30' 0"	18° 12' 0"
Central trough	144° 45' 0"	18° 1' 0"
Zealandia	145° 51' 4"	16° 52' 57"
E. Diamante	145° 40' 47"	15° 56' 31"
Ruby	145° 34' 24"	15° 36' 15"
Esmeralda	145° 14' 45"	14° 57' 30"
N.W. Rota #1	144° 46' 30"	14° 36' 0"
W. Rota	144° 50' 0"	14° 19' 30"
Forecast	143° 55' 12"	13° 23' 30"
Seamount X	144° 1' 0"	13° 14' 48"
South Backarc	143° 37' 8"	12° 57' 12"
Archaean site	143° 37' 55"	12° 56' 23"
Pika site	143° 38' 55"	12° 55' 7"
Toto	143° 31' 42"	12° 42' 48"

(c) Trench Unit. The Trench Unit includes the submerged lands of the Marianas Trench. The boundary of the Trench Unit extends from the northern limit of the EEZ around the Commonwealth of the Northern Mariana Islands to the southern limit of the EEZ around Guam as defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	145° 5' 46"	23° 53' 35"
2	145° 52' 27.10"	23° 45' 50.54"
3	146° 36' 18.91"	23° 29' 18.33"
4	147° 5' 16.84"	23° 11' 43.92"
5	147° 22' 31.43"	20° 38' 41.35"
6	147° 40' 48.31"	19° 59' 23.30"
7	147° 39' 59.51"	19° 27' 2.96"
8	147° 48' 51.61"	19° 8' 18.74"

9	148° 21' 47.20"	18° 56' 6.46"
10	148° 42' 50.50"	17° 58' 2.20"
11	148° 34' 47.12"	16° 40' 53.86"
12	148° 5' 39.95"	15° 25' 51.09"
13	146° 23' 24.38"	12° 21' 38.38"
14	145° 28' 33.28"	11° 34' 7.64"
15	143° 3' 9"	10° 57' 30"
16	142° 19' 54.93"	11° 47' 24.83"
17	144° 42' 31.24"	12° 21' 24.65"
18	145° 17' 59.93"	12° 33' 5.35"
19	147° 29' 32.24"	15° 49' 25.53"
20	147° 27' 32.35"	17° 57' 52.76"
21	147° 20' 16.96"	19° 9' 19.41"
22	146° 57' 55.31"	20° 23' 58.80"
23	145° 44' 31.14"	21° 11' 14.60"
24	144° 5' 27.55"	23° 2' 28.67"
1	145° 5' 46"	23° 53' 35"

§ 665.902 Definitions.

The following definitions are used in this subpart:

Management unit species or MUS means the Mariana Archipelago management unit species as defined in §§ 665.401, 665.421, 665.441, and 665.461, and the pelagic management unit species as defined in § 665.800.

Monument means the submerged lands and, where applicable, waters of the Marianas Trench Marine National Monument as defined in § 665.901.

Proclamation means Presidential Proclamation 8335 of January 6, 2009, "Establishment of the Marianas Trench Marine National Monument."

§ 665.903 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and § 665.15 and subpart D of this part, the following activities are prohibited in the Islands Unit and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in violation of § 665.904(a).

(b) Non-commercial fishing, except as authorized under permit and pursuant to the procedures and criteria established in § 665.905.

(c) Transferring a permit in violation of § 665.905(d).

(d) Commercial fishing outside the Islands Unit and non-commercial fishing within the Islands Unit on the same trip in violation of § 665.904(c).

§ 665.904 Regulated activities.

(a) Commercial fishing is prohibited in the Islands Unit.

(b) Non-commercial fishing is prohibited in the Islands Unit, except as authorized under permit and pursuant to the procedures and criteria established in § 665.905.

(c) Commercial fishing outside the Islands Unit and non-commercial fishing within the Islands Unit during the same trip is prohibited.

§ 665.905 Fishing permit procedures and criteria.

(a) Marianas Trench Monument Islands Unit non-commercial permit -- (1) Applicability. Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Islands Unit must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) Eligibility criteria. A permit issued under this section may be issued only to a community resident of Guam or the CNMI.

(3) Terms and conditions. (i) Customary exchange of fish harvested within the Islands Unit under a non-commercial permit is allowed, except that customary exchange by fishermen engaged in recreational fishing is prohibited.

(ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses, including but not limited to ice, bait, fuel, or food.

(b) Marianas Trench Monument Islands Unit recreational charter permit -- (1) Applicability. Both the owner and operator of a vessel chartered to recreationally fish for, take, retain, or possess MUS in the Islands Unit must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) Eligibility criteria. To be eligible for a permit issued under this section, a charter business must be established legally under the laws of Guam or the CNMI.

(3) Terms and conditions. (i) The sale or exchange through barter or trade of fish caught in the Monument by a charter boat is prohibited.

(ii) No MUS harvested under a recreational charter fishing permit may be used for the purposes of customary exchange.

(c) Application. An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) Transfer. A permit issued under this section is not transferrable.

(e) Reporting and recordkeeping. The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.906 International law.

The regulations in this subpart shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Subpart H -- Pacific Remote Islands Marine National Monument

§ 665.930 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in the Monument.

§ 665.931 Boundaries.

The Monument, including the waters and submerged and emergent lands of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll, is defined as follows:

(a) Wake Island. The Wake Island unit of the Monument includes the waters and submerged and emergent lands around Wake Island within an area defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	165° 42' 56"	20° 9' 27"
2	167° 32' 23"	20° 9' 27"
3	167° 32' 23"	18° 25' 51"
4	165° 42' 56"	18° 25' 51"
1	165° 42' 56"	20° 9' 27"

(b) Howland and Baker Islands. The Howland and Baker Islands units of the Monument include the waters and submerged and emergent lands around Howland and Baker Islands within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	Lat.
-----------	-----------------	-------------

1	177° 27' 7"	1° 39' 15" N.
2	175° 38' 32"	1° 39' 15" N.
3	175° 38' 32"	0° 38' 33" S.
4	177° 27' 7"	0° 38' 33" S.
1	177° 27' 7"	1° 39' 15" N.

(c) Jarvis Island. The Jarvis Island unit of the Monument includes the waters and submerged and emergent lands around Jarvis Island within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	Lat.
1	160° 50' 52"	0° 28' 39" N.
2	159° 8' 53"	0° 28' 39" N.
3	159° 8' 53"	1° 13' 15" S.
4	160° 50' 52"	1° 13' 15" S.
1	160° 50' 52"	0° 28' 39" N.

(d) Johnston Atoll. The Johnston Atoll unit of the Monument includes the waters and submerged and emergent lands around Johnston Atoll within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	N. lat.
1	170° 24' 37"	17° 35' 39"
2	168° 37' 32"	17° 35' 39"
3	168° 37' 32"	15° 53' 26"
4	170° 24' 37"	15° 53' 26"
1	170° 24' 37"	17° 35' 39"

(e) Kingman Reef and Palmyra Atoll. The Kingman Reef and Palmyra Atoll units of the Monument include the waters and submerged and emergent lands around Kingman Reef and Palmyra

Atoll within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	N. lat.
1	163° 11' 16"	7° 14' 38"
2	161° 12' 3"	7° 14' 38"
3	161° 12' 3"	5° 20' 23"
4	161° 25' 22"	5° 1' 34"
5	163° 11' 16"	5° 1' 34"
1	163° 11' 16"	7° 14' 38"

§ 665.932 Definitions.

The following definitions are used in this subpart:

Management unit species or MUS means the Pacific Remote Island Areas management unit species as defined in §§ 665.601, 665.621, 665.641, and 665.661, and the pelagic management unit species as defined in § 665.800.

Monument means the waters and submerged and emergent lands of the Pacific Remote Islands Marine National Monument, as defined in § 665.931.

Proclamation means Presidential Proclamation 8336 of January 6, 2009, "Establishment of the Pacific Remote Islands Marine National Monument."

§ 665.933 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and § 665.15 and subparts E and F of this part, the following activities are prohibited in the

Monument and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in the Monument.

(b) Non-commercial fishing in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.935.

(c) Transferring a permit in violation of § 665.935(d).

(d) Commercial fishing outside the Monument and non-commercial fishing within the Monument on the same trip in violation of § 665.934(c).

(e) Non-commercial fishing within 12 nm of emergent land within the Monument, unless authorized by the U.S. Fish & Wildlife Service, in consultation with NMFS and the Council, in violation of § 665.934(d). For the purposes of this subsection, consultation means that the U.S. Fish & Wildlife Service will consult with NMFS, which in turn will consult with the Council.

§ 665.934 Regulated activities.

(a) Commercial fishing is prohibited in the Monument.

(b) Non-commercial fishing is prohibited in the Monument, except under permit and pursuant to the procedures and criteria established in § 665.935 or pursuant to § 665.934(d).

(c) Commercial fishing outside the Monument and non-commercial fishing within the Monument during the same trip is prohibited.

(d) Non-commercial fishing is prohibited within 12 nm of emergent land within the Monument, unless authorized by the U.S. Fish & Wildlife Service, in consultation with NMFS and the Council. For the purposes of this subsection, consultation means that the U.S. Fish & Wildlife Service will consult with NMFS, which in turn will consult with the Council.

§ 665.935 Fishing permit procedures and criteria.

(a) Non-commercial fishing. -- (1) Applicability. Except as provided in section 665.934(d), a vessel that is used to non-commercially fish for, take, retain, or possess MUS in the Monument must be registered for use with a permit issued pursuant to §§ 665.603, 665.624, 665.642, 665.662, 665.801(f), or 665.801(g).

(2) Terms and conditions. Customary exchange of fish harvested in the Monument is prohibited.

(b) Pacific Remote Islands Monument recreational charter permit -- (1) Applicability. Except as provided in § 665.934(d), both the owner and operator of a vessel that is chartered to recreationally fish for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the

permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) Terms and conditions. (i) The sale or exchange through barter or trade of fish caught by a charter boat fishing in the Monument is prohibited.

(ii) Customary exchange of fish harvested under a Monument recreational charter permit is prohibited.

(c) Application. An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) Transfer. A permit issued under this section is not transferrable.

(e) Reporting and recordkeeping. The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.936 International law.

The regulations in this subpart shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Subpart I -- Rose Atoll Marine National Monument

§ 665.960 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing within the Monument. Nothing in this subpart shall be deemed to diminish or enlarge the jurisdiction of the Territory of American Samoa.

§ 665.961 Boundaries.

The Monument consists of emergent and submerged lands and waters extending seaward approximately 50 nm from Rose Atoll. The boundary is defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	S. lat.
1	169° 0' 42"	13° 41' 54"
2	167° 17' 0"	13° 41' 54"
3	167° 17' 0"	15° 23' 10"
4	169° 0' 42"	15° 23' 10"
1	169° 0' 42"	13° 41' 54"

§ 665.962 Definitions.

The following definitions are used in this subpart:

Management Unit Species or MUS means the American Samoa management unit species as defined in §§ 665.401, 665.421, 665.441, and 665.461, and the pelagic management unit species as defined in § 665.800.

Monument means the waters and emergent and submerged lands of the Rose Atoll Marine National Monument, as defined in § 665.961.

Proclamation means Presidential Proclamation 8337 of January 6, 2009, "Establishment of the Rose Atoll Marine National Monument."

§ 665.963 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and § 665.15 and subpart B of this part, the following activities are prohibited in the Monument and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in the Monument.

(b) Non-commercial fishing in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.965.

(c) Transferring a permit in violation of § 665.965(d).

(d) Commercial fishing outside the Monument and non-commercial fishing within the Monument on the same trip in violation of § 665.964(c).

(e) Fishing within 12 nm of emergent land within the Monument in violation of § 665.964(d).

§ 665.964 Regulated activities.

(a) Commercial fishing is prohibited in the Monument.

(b) Non-commercial fishing is prohibited in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.965.

(c) Commercial fishing outside the Monument and non-commercial fishing within the Monument during the same trip is prohibited.

(d) All fishing is prohibited within 12 nm of emergent land within the Monument.

§ 665.965 Fishing permit procedures and criteria.

(a) Rose Atoll Monument non-commercial fishing permit --

(1) Applicability. Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) Eligibility criteria. A permit issued under this section may be issued only to a community resident of American Samoa.

(3) Terms and conditions. (i) Customary exchange of fish harvested under a non-commercial permit within the Monument is allowed, except that customary exchange by fishermen engaged in recreational fishing is prohibited.

(ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses, including but not limited to ice, bait, fuel, or food.

(b) Rose Atoll Monument recreational charter permit -- (1) Applicability. Both the owner and operator of a vessel that is chartered to fish recreationally for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) Permit eligibility criteria. To be eligible for a permit issued under this section, a charter business must be established legally under the laws of American Samoa.

(3) Terms and conditions. (i) The sale or exchange through barter or trade of fish caught by a charter boat fishing in the Monument is prohibited.

(ii) No MUS harvested under a recreational charter fishing permit may be used for the purposes of customary exchange.

(c) Application. An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) Transfer. A permit issued under this section is not transferrable.

(e) Reporting and recordkeeping. The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.966 International law.

The regulations in this subpart shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

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